

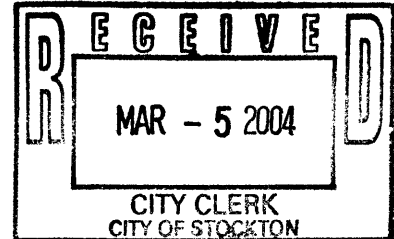


# CITY OF STOCKTON

## OFFICE OF THE CITY ATTORNEY

City Hall • 425 N. El Dorado Street • Stockton, CA 95202-1997 • 209/937-8333 • Fax 209/937-8898  
www.stocktongov.com

REPLY TO: \_\_\_\_\_



DATE: March 4, 2004

TO: KATHERINE GONG MEISSNER, City Clerk

FROM: GUY D. PETZOLD, Deputy City Attorney

RE: AMENDED COLLECTION SERVICE AGREEMENT BETWEEN THE CITY OF STOCKTON AND USA WASTE OF CALIFORNIA, INC.--SOLID WASTE, RECYCLABLE MATERIALS, AND GREEN WASTE AND FOOD WASTE SERVICES

Attached is a fully executed amended agreement dated February 2, 2004. Said Agreement was authorized by City Council Ordinance No. 013-03, adopted on April 29, 2003, and effective on June 1, 2004.

Please retain said Agreement in your files.

OFFICE OF THE CITY ATTORNEY

By   
GUY D. PETZOLD  
DEPUTY CITY ATTORNEY

GDP:plc

Attachment

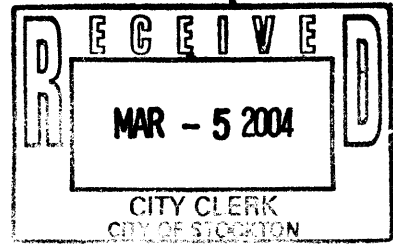
cc: Administrative Services (Attn: John Hinson)  
Public Works Dept. (Attn: Mike Miller) (w/o attachment)  
USA Waste of California, Inc.  
Attn: District Manager  
Stockton Scavengers Assn.  
1240 Navy Drive  
Stockton CA 95206

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C-03-187 (P)



**Amended  
Collection Service Agreement**

**for**

**SOLID WASTE, RECYCLABLE MATERIALS, AND  
GREEN WASTE  
AND FOOD WASTE SERVICES**

**between**

**City of Stockton**

**and**

**USA Waste of California, Inc.**

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1 **AGREEMENT**

2  
3 This AGREEMENT made and entered into this 2 day of FEB, 200~~3~~<sup>4</sup> amends the  
4 Collection Service Agreement for SOLID WASTE, RECYCLABLE MATERIALS, AND GREEN  
5 WASTE AND FOOD WASTE SERVICES, dated April 18, 2003, between the City of Stockton  
6 (hereinafter "City") a municipal corporation of the state of California, and USA Waste of  
7 California, Inc., a Delaware corporation (hereinafter "Contractor") doing business as Stockton  
8 Scavengers Association.  
9

10 **Recitals**

11  
12 This Agreement is entered into with reference to the following facts and circumstances:  
13

- 14 1. The Legislature of the State of California, by enactment of the California Integrated Waste  
15 Management Act of 1989 (AB 939), set forth in Public Resources Code Sections 40000 *et*  
16 *seq.*, declares that it is within the public interest to authorize and require local agencies to  
17 make adequate provision for Solid Waste handling within their jurisdiction.  
18  
19 2. The City Council of the City has determined that the public health, safety and well being of  
20 its residents require that certain Solid Waste Collection, transportation, processing,  
21 Recycling, Green Waste and Food Waste, street sweeping, and Disposal services, as  
22 specified in this Agreement, be provided by an exclusive contract.  
23

24 **Agreement**

25  
26 NOW, THEREFORE, intending to be legally bound, the Parties agree as follows:

*This page intentionally left blank.*

28 **ARTICLE 1**  
29 **DEFINITIONS**  
30

31 For purposes of this Agreement the following words or phrases shall have the following  
32 meanings unless any such word is otherwise specifically defined herein or unless it is obvious  
33 from the context hereof that another meaning is necessarily intended. To the extent that these  
34 definitions differ from those found in the City ordinances and codes, these definitions shall  
35 prevail.  
36

37 **AB 939** "AB 939" means the California Integrated Waste Management Act of 1989 (Division 30,  
38 California Public Resources Code), as amended, supplemented, superseded, and replaced  
39 from time to time.  
40

41 **AB 939 Fee** "AB 939 Fee" means the portion of Rate Revenues specified in Article 3.5 and due  
42 to the City from Rate Revenues, whether billed by the Contactor or the City.  
43

44 **Agreement** "Agreement" means this Agreement between the City and Contractor for the  
45 provision of the Collection Services as specified herein, including all exhibits and future  
46 amendments.  
47

48 **Applicable Law** "Applicable Law" means all laws, regulations, rules, orders, judgments,  
49 decrees, permits, approvals, or other requirement of any governmental agency having  
50 jurisdiction over the collection and disposition of Solid Waste, Recyclable Materials and Green  
51 Waste and Food Waste that are in force on or promulgated or enacted after the Signature Date  
52 as they may be enacted, issued or amended during the Term of this Agreement.  
53

54 **Base Term** "Base Term" means the initial fifteen (15) year portion of the Term of the  
55 Agreement, commencing on June 1, 2004 and ending on May 31, 2019.  
56

57 **Best Efforts** "Best Efforts" as used in this Agreement with regard to performance of  
58 Contractor's obligations to Divert materials, shall mean at a minimum to competently undertake  
59 each of the programs for which materials Diversion is required hereunder and to perform  
60 materials Diversion activities for the program in a manner which is equal to or exceeds industry  
61 standards within California for communities which are in compliance with AB 939 diversion  
62 requirements.  
63

64 **Bin** "Bin" means a receptacle for Solid Waste, Recyclable Materials, or Green Waste and Food  
65 Waste, provided by the Contractor unless owned by the Customer, having a capacity less than  
66 ten (10) cubic yards that generally has wheels, a handle for ease of movement and a tight-  
67 fitting, attached lid, and is designed to be dumped mechanically into a front loading Collection  
68 vehicle.  
69

70 **Bin Service** "Bin Service" means the provision of Collection Services using Bins.  
71

72 **Bulky Items** "Bulky Items" means all discarded household waste matter that is too large to be  
73 placed in a Cart, including large household appliances, including appliances containing  
74 chlorofluorocarbons (CFCs), furniture, tires, carpets, mattresses, electronic scrap including  
75 computers, monitors and peripherals, televisions, including electronic scrap containing cathode  
76 ray tubes (CRTs) and similar large items that require special handling due to their size.

77 **Cart** "Cart" means wheeled Containers of approximately thirty (30), sixty (60) and ninety (90)  
78 gallon capacity provided by Contractor to Customers for Collection of Solid Waste, Recyclables,  
79 and Green Waste and Food Waste.

80  
81 **Cart Service** "Cart Service" means provision of Collection Services using Carts, and charged at  
82 a single Rate based on Solid Waste Cart size.

83  
84 **CERCLA** "CERCLA" means the Comprehensive Environmental Responsibility Compensation  
85 and Liability Act, 42 U.S.C.A. Section 9601 *et seq.* (West 1983 & Supp. 1989), as amended or  
86 superseded, and the regulations promulgated thereunder.

87  
88 **Change in Law** "Change in Law" means the following events or conditions which have a  
89 substantial, material and adverse effect on the performance by the Parties of their respective  
90 obligations under this Agreement (except for performance of remittance obligations):

- 91  
92 1. Enactment, adoption, promulgation, issuance, modification, or written change in  
93 administrative or judicial interpretation on or after the Signature Date of any Applicable  
94 Law; or  
95  
96 2. Order or judgment of any governmental body, on or after the Signature Date, to the  
97 extent such order or judgment is not the result of willful or negligent action, error or  
98 omission or lack of reasonable diligence of City or of Contractor, whichever is asserting  
99 the occurrence of a Change in Law; provided, however, that the contesting in good faith  
100 or the failure in good faith to contest any such order or judgment shall not constitute or  
101 be construed as such a willful or negligent action, error, or omission or lack of  
102 reasonable diligence.

103  
104 **Change in Scope** "Change in Scope" is a significant change in the type or level of Collection  
105 Services for which Contractor may be compensated as provided in Article 5.7.

106  
107 **City** "City" means the City of Stockton, California, as its boundaries exist now or in the future.

108  
109 **City Council** "City Council" means the legislative body of City.

110  
111 **City Representative** "City Representative" means City Manager, or an agent of City authorized  
112 by written notice to Contractor to enforce the terms of this Agreement.

113  
114 **City Services** "City Services" means the services provided by Contractor to City buildings and  
115 public locations at no additional cost as provided in Articles 4.10, 4.11, and Exhibits A and F.

116  
117 **Collection** "Collection," "Collect," "Collected," "Collecting" means Collection by Contractor of  
118 Solid Waste, Recyclable Materials, Green Waste and Food Waste, street sweeping material, or  
119 other material specified in this Agreement and its transportation to a Designated Disposal or  
120 Transfer Facility, Green Waste Processing Facility or a Recycling Facility.

121  
122 **Collection Materials** "Collection Materials" means all Solid Waste, Recyclables Green Waste  
123 and Food Waste generated in the City and included within this Agreement as provided in Article  
124 3.2.

**Collection Services** "Collection Services" means all of the rights, duties and obligations of Contractor as specified in this Agreement, and associated with this Agreement.

**Collection Services Area** "Collection Services Area" means the territory identified within City limits, as described in Exhibit C and as such limits may change from time to time due to annexations or other means.

**Commercial Service** "Commercial Service" means provision of Collection Services to commercial Customers including all warehouse, wholesale, or retail stores, service establishments of any type, professional offices, hospitals, education, health care, military and correctional institutions, and government offices.

**Compactor, Compactors, Compactor Service** "Compactor," "Compactors," "Compactor Service" means any Bin or other similar Container incorporating a built-in mechanism to reduce waste volume by crushing action or other compacting method. Compactor Service is the Collection of Collection Material from Compactors owned by the Customer or rented from Contractor. Household trash compactors in dwellings are not included in this definition.

**Construction and Demolition Debris** "Construction and Demolition Debris" means the debris, used construction materials, dredging, grubbing, and rubble resulting from constructing, remodeling, repair, razing, renovation, demolition, excavation or construction clean-up activities at Residential, Commercial or governmental buildings, and any other structure or pavement.

**Consumer Price Index, CPI** "Consumer Price Index" or "CPI" means the Consumer Price Index for San Francisco-Oakland-San Jose, CA, All Urban Consumers, Standard Metropolitan Statistical Area as published by the United States Department of Labor, Bureau of Labor Statistics, or any successor index.

**Containers** "Containers" means Bins, Carts, Compactors and Debris Boxes used to provide Solid Waste, Recyclables or Green Waste and Food Waste Collection, as well as City-owned containers used for Solid Waste and Recyclables in public locations.

**Contractor** "Contractor" means USA Waste of California, Inc., a Delaware Corporation.

**Contractor Fee** "Contractor Fee" means the portion of Rate Revenues specified in Article 3.5 and due to the City from Rate Revenues, whether billed by the Contractor or the City and in return for grant of the exclusive rights provided for in this Agreement.

**CPI Adjustment Factor** "CPI Adjustment Factor" means 50 percent, the percentage of CPI by which each Rate is adjusted annually.

**Customer** "Customer" means the person or entities receiving Collection Services.

**Debris Box, Debris Boxes, Debris Box Service** "Debris Box, Debris Boxes, Debris Box Service" means service of Containers that are individually dropped at and picked up from the site of use, and that have minimum capacities of ten (10) cubic yards and are serviced with a roll-off truck.

**Delivery** "Delivery" of Solid Waste, Recyclables, or Green Waste and Food Waste has occurred once a Customer has deposited Solid Waste, Recyclables, or Green Waste and Food

Waste in a receptacle or at a location that is designated for Collection pursuant to City's codes or ordinances, or is otherwise lawfully discarded.

**Designated Disposal or Transfer Facility** "Designated Disposal or Transfer Facility" means the Forward Inc. Landfill, or such other transfer or Disposal facility(ies) to which the Contractor will transport all Solid Waste Collected under this Agreement, as specified or as otherwise excepted in Article 4.

**Disposal** "Disposal," "Disposing," "Dispose," or "Disposed" means the final disposition of Solid Waste Collected by Contractor, at the Designated Disposal or Transfer Facility.

**Diversion, Divert** "Diversion"," Divert" means the tonnage or percentage of Collected Collection Materials that are not Disposed.

**Effective Date** "Effective Date" means June 1, 2004.

**Extension** "Extension" means any of the Extensions that may be provided by the City as defined in Article 3.1B or 3.1C.

**Food Waste** "Food Waste" means all source-separated vegetable waste, fruit waste, grain waste, and dairy waste co-collected with Green Waste. By mutual agreement of the Parties, "Food Waste" will also include meat waste, fish waste, food-contaminated paper and other compostable paper (such as pizza boxes, take-out containers, napkins and paper towels), and untreated and unpainted wall board.

**Green Waste** "Green Waste" means biodegradable materials such as leaves, grass, weeds, and wood materials from trees and shrubs, provided that larger items such as tree stumps and intact dead trees are Bulky Items.

**Green Waste Processing Facility** "Green Waste Processing Facility" means the facility(ies) used by Contractor for handling, processing, and preparing Green Waste and Food Waste for marketing through beneficial reuse such as mulching, composting or processing for alternative daily cover.

**Gross Rate Revenues** "Gross Rate Revenues" means all Rate Revenues collected by the Contractor and/or by the City from Customers.

**Hazardous Waste** "Hazardous Waste" shall have the meaning set forth in California Code of Regulations, Title 14, Division 7, Chapter 3, Article 4, Section 17225.32 and Health and Safety Code Section 25117, or in CERCLA, or in their successor laws and regulations as may be amended from time to time, whichever definition is in the opinion of the City more inclusive.

**Household Hazardous Waste** "Household Hazardous Waste" shall have the meaning set forth in California Code of Regulations, Title 14, Division 7, Chapter 7, Article 1.1, Section 18502 or successor laws and regulations as may be amended from time to time.

**Landfill Sale Agreement** "Landfill Sale Agreement" means in general the agreement entitled "Purchase and Sale Agreement between the City of Stockton, Forward, Inc. and Allied Waste North America, Inc." related to the Austin Road Landfill and the French Camp Landfill and with the effective date of September 1, 2000 together with any special provisions, rate adjustments,

addenda or other related documents, and in specific the provisions of the Landfill Sale Agreement regarding City direction of residential Solid Waste for Disposal at the Forward Inc. Landfill through August 31, 2007 and at specified tip fees.

**Liquidated Damages** "Liquidated Damages" means the damages for specified violations of the terms of the Agreement as enumerated in Exhibit J and levied by City against Contractor.

**Low Emission Vehicle** "Low Emission Vehicle" means an on-road vehicle meeting the local, state and federal standards for low exhaust emissions, as they may change from time to time.

**Medical and Infectious Waste** "Medical and Infectious Waste" means biomedical waste generated at hospitals, public or private medical clinics, dental offices, research laboratories, pharmaceutical industries, blood banks, mortuaries, veterinary facilities, and other similar establishments.

**Monthly Remittance** "Monthly Remittance" "Monthly Remittance(s)" means the monthly payment made to the City by the Contractor and to the Contractor by the City as specified in Article 6.

**Multi-Family Service** "Multi-Family Service" means Collection Services provided to the owner or residents of any building and/or structure, or portion thereof, located in City that is used for residential housing and having four (4) or more distinct living units.

**Party** "Party" or "Parties" means City or Contractor individually, or City and Contractor.

**Rate Revenue** "Rate Revenue" means the revenue billed to and collected from Customers by Contractor for provision of Multi-Family and Commercial Collection Services, and by the City on behalf of the Contractor for Single-Family Collection services, as based on the City's approved and published Rates.

**Rates** "Rates" or "Rate" means the amount each Customer is billed by Contractor or billed by the City on behalf of the Contractor, as specified in the Rate schedules as approved by the City.

**Recyclable Materials, Recyclables** "Recyclable Materials" or "Recyclables" means discarded materials from the Customer intended for and capable of being Recycled, and that are separated, set aside, handled, packaged offered, or otherwise Delivered for Collection by a Customer in a manner different from Solid Waste. Exhibit A includes the initial list of Recyclable Materials that may be set out for Collection by Customers receiving Single-Stream Recycling Service.

**Recycle, Recycled, Recycling** "Recycle, Recycled, Recycling" means the process of Collection, sorting, cleansing, treating and reconstituting Recyclable Materials that would otherwise be Disposed of, and returning them to the economy in the form of raw materials for new, reused, repaired, refabricated, remanufactured, or reconstituted products. The Collection, transportation, or Disposal of Solid Waste not intended for, or capable of, reuse is not Recycling.

**Recycling Facility** "Recycling Facility" means the facility(ies) used by Contractor for handling, processing, and preparing Recyclable Materials for marketing.

**Refuse** "Refuse" means waste material intended for Disposal and including: (1) all putrescible and nonputrescible wastes, except liquid-carried industrial wastes or sewage hauled as an incidental part of septic tank or cesspool-cleaning service; (2) garbage (i.e. putrescible animal, fish, food, fowl, fruit or vegetable matter, or any thereof, resulting from the preparation, storage, handling or consumption of such substances); (3) rubbish (such as printed materials, paper, pasteboard, rags, straw, used and discarded clothing, packaging materials, ashes, floor sweepings, glass, and other waste materials).

**Residue** "Residue" means materials which remain after processing Recyclable Materials which cannot be Recycled, marketed, or otherwise utilized, including, but not limited to, materials such as rocks, contaminated paper, putrescibles, and other debris. Residue shall not exceed ten (10) percent by weight of the materials processed for Recycling, and may be Disposed of at a Disposal facility(ies) of Contractor's choosing.

**Self-Haul** "Self-Haul" means that any construction contractor, landscape contractor, or individual may transport and dispose of debris from a construction or demolition or landscaping site at which the contractor or individual is performing work or which the individual owns or leases, so long as the contractor or individual utilizes its own personnel and equipment and has secured any necessary hauling permits from the City. "Self-Haul" also refers to transporting by a Customer of Collection Materials generated within the City by the Customer, as long as the Customer is billed for and is paying for Collection Services according to the City's approved and published Rates.

**Senior Rate** "Senior Rate" shall be charged to residential Customers demonstrating that they have reached sixty-five (65) years of age. The Senior Rate shall be ten (10) percent less than the standard Rate for Residential Services.

**Signature Date** "Signature Date" means the date of execution of this Agreement by both Parties.

**Single Stream Recycling** "Single Stream Recycling" means the use of a single Container to collect two or more types of Recyclables.

**Single-Family Service** "Single-Family Service" means provision of Collection Services to any building and/or structure, or portion thereof, in City that is used for residential housing purposes, irrespective of whether residence therein is transient, temporary or permanent, and having three (3) or fewer distinct living units.

**Solid Waste** "Solid Waste" means solid waste as defined in California Public Resources Code, Division 30, Part 1, Chapter 2, Section 40191 and regulations promulgated thereunder and without limitation includes the following: (1) Refuse; (2) Bulky Items; (3) Special Wastes; (4) vehicle parts as defined in California Code of Regulations, Title 23, Division 3, Chapter 15, Section 2520(d)(3) and Section 2523(c); and (5) electronic materials classified as universal wastes pursuant to CCR Title 14, Section 66260.22 et seq. Excluded from the definition of Solid Waste are Hazardous, Medical and Infectious Waste, Recyclable Materials kept separate from Solid Waste for the purpose of Recycling, Green Waste, Construction and Demolition Debris, and Special Wastes that cannot be disposed of in Class III landfills. Notwithstanding any provision to the contrary, "Solid Waste" may include de minimis volumes or concentrations of waste of a type and amount normally found in residential Solid Waste after implementation of



programs for the safe collection, recycling, treatment and disposal of household hazardous waste in compliance with Section 41500 and 41802 of the California Public Resources Code.

**Special Charges** "Special Charges" are specific service-related residential and commercial charges that are contained on Exhibit I, Schedule of Rates and that may be billed by the Contractor or by the City upon advance notice to the Customer.

**Special Events** "Special Events" means community events and activities sponsored by City, as defined in Article 4.12 and Exhibit G.

**Special Waste** "Special Waste" includes flammable waste; liquid waste transported in a bulk tanker; sewage sludge; pollution control process waste; residue and debris from cleanup of a spill or release of chemical substances, commercial products, or any other Special Wastes; contaminated soil, waste, residue, debris, and articles from the cleanup of a site or facility formerly used for the generation, storage, treatment, Recycling, reclamation, or Disposal of any other Special Wastes; dead animals; manure; waste water; explosive substances; radioactive substances; abandoned or discarded automobiles, trucks, motorcycles or parts thereof, including tires; fluorescent tubes; and any other materials that under current or future statute or regulation require the application of special treatment, handling, or disposal practices beyond those normally required for Solid Waste.

**Substantial Evidence** "Substantial Evidence" means such evidence as would convince a reasonable person and on which reasonable persons may not differ as to the conclusion to be drawn from such evidence.

**Term** "Term" means the Base Term and any Extension, as provided in Article 3.

**Uncontrollable Circumstance** "Uncontrollable Circumstance" means an act of God, including landslides, lighting, fires, storms, floods, pestilence, freezing, and earthquakes; explosions, sabotage, civil disturbances, acts of a public enemy, wars, blockades, riots, eminent domain, condemnation or other taking, or other events of a similar nature, not caused or maintained by the City or the Contractor, which event is not reasonably within the control of the Contractor, and only to the extent such event has a material adverse effect on the ability of the Contractor to perform Collection Services. Events that could or should have been prevented through reasonable precaution, including compliance with agreements and applicable laws, shall not be considered Uncontrollable Circumstances. Labor unrest, including but not limited to strike, work stoppage or slowdown, sickout, picketing, or other concerted job action conducted by the Contractor's employees or directed at the Contractor, or a subcontractor, are not considered Uncontrollable Circumstances.

**Working Days** "Working Days", unless otherwise specified, means Monday through Saturday.



**ARTICLE 2**  
**REPRESENTATIONS AND WARRANTIES**

**2.1 CORPORATE STATUS**

The Contractor is a division of a corporation duly organized, validly existing, and in good standing under the laws of the State of California. The Contractor is qualified to transact business in the State of California and has the corporate power to own its properties and to carry on its business as now owned and operated and as required by this Agreement. The Contractor agrees that this Agreement is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The Contractor has not directly or indirectly colluded, conspired, connived, or agreed with any person, partnership, company, association, organization, or corporation to secure any advantage against the City.

**2.2 CORPORATE AUTHORIZATION**

The Contractor has the authority to enter into and perform its obligations under this Agreement. The Board of Directors of the Contractor (or the shareholders if necessary) has taken all actions required by law, its articles of incorporation, its bylaws or otherwise to authorize the execution of this Agreement. The persons signing this Agreement on behalf of the Contractor have authority to do so. This Agreement constitutes the legal, valid and binding obligation of the Contractor enforceable in accordance with its terms, except as limited by applicable bankruptcy insolvency, reorganization, moratorium or other laws or general application relating to or affecting enforcement of creditors' rights.

**2.3 CITY RIGHT TO DESIGNATE DISPOSAL AND/OR GREEN WASTE FACILITY**

The Contractor acknowledges the City's right to direct the Contractor to a Transfer or Disposal Facility for the transfer and/or Disposal of Solid Waste and to a Green Waste Processing Facility for processing of Green Waste.

**2.4 NO CONFLICT**

Neither the execution nor the delivery by the Contractor of this Agreement nor the performance by the Contractor of its obligations hereunder: (i) conflicts with, violates, or results in a breach of any law or governmental regulation applicable to the Contractor; (ii) conflicts with, violates, or results in a breach of any term or condition of any judgment, decree, agreement (including, without limitation, the certificate of incorporation of the Contractor), or instrument to which the Contractor is a party or by which the Contractor or any of its properties or assets are bound, or constitutes a default under any such judgment, decree, agreement or instrument; or (iii) will result in the creation or imposition of any encumbrance of any nature whatsoever upon any of the properties or assets of Contractor.

**2.5 NO LITIGATION**

As of the Signature Date of the Agreement, there is no action, suit, or other proceeding at law or in equity, or to the best of the Contractor's knowledge, any investigation, before or by any court or governmental authority, pending or threatened against the Contractor which is likely to result in an unfavorable decision, ruling, or finding which would materially and adversely affect the validity or enforceability of this Agreement or any such agreement or instrument entered into by the Contractor in connection with the transactions contemplated hereby, or which could materially and adversely affect the ability of Contractor to perform its obligations hereunder or which would have a material adverse effect on the financial condition of the Contractor or its parent company.

415 **2.6 NO LEGAL PROHIBITION**

416 The Contractor has no knowledge of any applicable law in effect on the Signature Date that  
417 would prohibit the performance by the Contractor of this Agreement and the transactions  
418 contemplated hereby.  
419

420 **2.7 CONTRACTOR'S INVESTIGATION**

421 The Contractor has made an independent investigation (satisfactory to it) of the conditions and  
422 circumstances surrounding the Agreement and the work to be performed by it.  
423

424 **2.8 INFORMATION SUPPLIED BY CONTRACTOR**

425 The information supplied by the Contractor in all written submittals made in connection with  
426 procurement of the Contractor's services, including the Contractor's proposal, and negotiation  
427 and execution of this Agreement, and all verbal or written representations and warranties made  
428 by the Contractor throughout this Agreement are true, accurate, correct, and complete in all  
429 material respects on and as of the Signature Date of this Agreement.  
430

431 **2.9 REPRESENTATIVES OF THE PARTIES**

432 The Contractor has designated in writing a responsible officer who shall serve as the  
433 representative of the Contractor and who shall have authority in all daily operational matters  
434 related to the Agreement. The City may rely upon action taken by such designated  
435 representative as action of Contractor except for actions not taken within the scope of this  
436 Agreement. The District Manager shall be the initial designated representative of the  
437 Contractor. The Contractor shall notify the City Representative prior to, or at the time of a  
438 change in the designated representative.  
439

440 **2.10 WAIVER OF CERTAIN RIGHTS**

441 The Contractor hereby waives any right it may possess to contest the legal right, power, or the  
442 authority of City to enter into and perform this Agreement and agrees to cooperate with and  
443 assist the City in supporting the legal validity of, and authorization for, such provisions in the  
444 event of any legal challenge thereto brought or made in any manner by a third party.  
445

446 **2.11 WAIVER OF RENEWAL STATUTE**

447 The Contractor knowingly and specifically waives any and all rights it may have now or in the  
448 future as a result of California Public Resources Code, Division 30, Part 1, Chapter 2, Section  
449 49520, or any subsequent statute granting the same or similar rights regarding City notice to  
450 the Contractor of termination of the Agreement. Contractor agrees that its rights to provide any  
451 of the services specified in this Agreement shall be governed solely by the provisions of this  
452 Agreement, and any of its rights to provide such services shall terminate upon termination of  
453 this Agreement. This waiver shall not apply to services specified in Section 3.4 of this  
454 Agreement or otherwise not within the scope of or required to be provided by Contractor in this  
455 Agreement.  
456

457 **2.12 PARTIAL WAIVER AND CONTINUATION OF COMMERCIAL AND INDUSTRIAL WASTE**  
458 **COLLECTOR PERMIT RIGHTS**

459 Contractor knowingly and specifically waives any and all vested or non vested rights relating to  
460 providing services to Commercial Customers under its permit entitled "Commercial and  
461 Industrial Waste Collector Permit" to provide Commercial and Industrial Collection services in  
462 the City.

463 The City has previously provided the Contractor with a five year notice of termination for  
464 Contractor's current Commercial and Industrial Waste Collector Permit. As bargained for  
465 conditions and obligations of each party, the Contractor shall be entitled to obtain a future  
466 permit, or permits as may be required by city ordinances, to allow the Contractor to collect  
467 materials within the City which are excluded from the scope of this Agreement during its Term,  
468 including any Extension. The City will not take any action, such as granting of an exclusive  
469 franchise, which would deprive the Contractor from competing to provide services excluded  
470 from this Agreement for the period this Agreement is in effect.  
471

472 The Contractor shall be entitled to apply for and obtain new permits as may be required for  
473 collection of industrial waste and other such wastes excluded from this Agreement, provided  
474 that Contractor meets permit conditions as are set forth by then current City ordinances. With  
475 regard to the period extending five years from the Signature Date, City acknowledges that  
476 Contractor has a continuation of rights for collection of certain materials excluded from the  
477 scope of this Agreement, and, therefore, the City will not impose on the Contractor any  
478 additional application or permit renewal fee for that period. Thereafter, the Contractor shall be  
479 eligible to obtain a permit(s) for services excluded under this Agreement for all periods when  
480 this Agreement remains in effect under the same terms and conditions as are available to other  
481 permittees, including payment of permit application fees. All future permit(s) will be issued  
482 pursuant to terms provided for by ordinance, which may include, but not be limited to, payment  
483 of franchise fees and AB939 fees and Diversion goals. Nothing herein is intended to affect the  
484 rights of the City to enforce permit conditions, including termination for cause.



**ARTICLE 3**  
**COLLECTION SERVICES AGREEMENT**

**3.1 AGREEMENT TERM AND EXTENSIONS**

**A. Base Term**

The Collection Services granted in this Agreement shall continue in force for a period of fifteen (15) years ("Base Term") from 12:00 AM on June 1, 2004 ("Effective Date") to Midnight, May 31, 2019. Contractor will receive no compensation provided for in this Agreement prior to the Effective Date. However, the Parties acknowledge that the Contractor will undertake all implementation measures (as described in Exhibit M, Implementation and Customer Service Plan) prior to the Effective Date such that rollout of all new services will be completed by the Effective Date.

By executing this Agreement, the Parties agree that: 1) the terms and conditions, including compensation, of the existing agreement entitled "An Ordinance Granting a Residential Solid Waste and Recyclable Material Franchise" with a termination date of January 31, 2004, are extended and shall remain in effect until Midnight of May 31, 2004; and 2) the terms and conditions, including compensation, of the Contractor's Commercial and Industrial Waste Collector permit as granted by the City are to continue to remain effective until Midnight, May 31, 2004.

**B. Extensions**

Following the Base Term, and at the sole discretion of the City with or without cause, the Contractor may be granted up to one (1) five-year Extension of this Agreement and its full rights and responsibilities. The City shall provide Contractor written notice of Extension no less than one hundred and twenty (120) days prior to the conclusion of the Base Term. The Contractor has no express or implied right to an Extension.

**C. Agreement Transition Extension**

By giving written notice ninety (90) days prior to the effective date of termination of the Base Term, the City, at its sole discretion, may require the Contractor to continue to provide Collection Services under the terms of this Agreement for up to one hundred and eighty (180) days following the effective date of termination. The purpose of such an Extension is to ensure uninterrupted Collection Services in the event of transition to a successor contractor and/or ongoing contract renegotiations with present the Contractor that the City anticipates may not be concluded by the effective date of termination.

**3.2 COLLECTION SERVICES AGREEMENT**

**A. Services Provided**

The City hereby grants the Contractor, and the Contractor shall have throughout the duration of this Agreement, the exclusive right to engage in Collection, transportation, processing, transport for transfer and Disposal, and material sales related to the following:

1. Solid Waste placed in Carts by residential and commercial Customers.
2. Solid Waste placed in Bins by residential and commercial Customers.

3. Single Stream Recyclables placed in Carts or Bins by residential and commercial Customers.
4. Other Recyclables placed for Collection by residential and commercial Customers.
5. Green Waste and Food Waste placed in Carts or Bins by residential and commercial Customers.
6. Collection Materials placed in Debris Boxes by residential and commercial Customers.
7. Collection Materials placed in Compactors by residential and commercial Customers.
8. Construction and Demolition Debris placed in Bins or Debris Boxes by residential Customers.

The services specified in this Article 3.2A, together with those enumerated throughout the Agreement constitute the Collection Services.

#### **B. Compensation**

Except as noted in Article 6.4, A, or as otherwise specified, the Rates contained in Exhibit I in their initial form as of the Effective Date, and as they are adjusted during the Term are the Contractor's sole compensation for provision of Collection Services. The Contractor shall retain all revenue from the sale or salvage of Recyclable Materials.

### **3.3 PROVISION OF SERVICE**

#### **A. General**

The work to be done by the Contractor pursuant to this Agreement shall include the furnishing of all labor, supervision, vehicles, Containers, other equipment, materials, supplies, and all other items necessary to perform all Collection Services, and the payment of all related expenses including all taxes, utility charges, etc. The Collection Services shall be performed in a thorough and professional manner that constitutes litter free, reliable, courteous and high-quality service. The Contractor shall at all times provide Collection Services using best industry practice for comparable operations, performed at all times in full accordance with Exhibit A Scope of Work, and Exhibit B, Standards of Performance. Unless otherwise specifically stated in this Agreement, the Rates are the only compensation to the Contractor for provision of Collection Services. Contractor shall make Best Efforts to Recycle or Divert from Disposal fifty percent (50%) of all Collection Materials collected in performing all Collection Services.

#### **B. Hours of Collection**

The Contractor shall limit Collection to 5 AM to 6 PM in residential zones. The Contractor shall limit Collection to 4 AM to 6 PM in commercial and industrial zones except that the City reserves the right to require later Collection in sensitive areas near residences.

### **3.4 EXCEPTIONS TO COLLECTION SERVICES AGREEMENT**

The following services and materials are expressly excluded from this Agreement. The granting of this Agreement shall not preclude the services and materials described below from being provided, or delivered to, collected and/or transported by others, provided that nothing in this Agreement is intended to or shall be construed to excuse any person from any authorization from the City that is otherwise required by law:



1. Customers from donating or selling Recyclable Materials to any party of their choice.
2. Recyclables Collection services provided to commercial Customers on a fee-for-service basis, provided that at least ninety (90) percent of each load is actually Recycled, and not Disposed of. Participation by commercial businesses in Recyclables Collection is voluntary. This Agreement shall not be construed to in any manner limit City in granting rights or privileges to other persons for the provision of Recyclables Collection services to commercial establishments.
3. Recyclables Collection services provided by a Commercial and Industrial Waste Collector permitted as of February 1, 2003 provided to commercial Customers on a fee-for service basis, provided that at least seventy (70) percent of all materials collected are Recycled, and not Disposed of.
4. Materials which would otherwise constitute Collection Materials that are removed from a premises by a landscaping or gardening contractor as an incidental part of a gardening, landscaping, tree trimming, cleaning, maintenance, construction or similar service offered by that the contractor rather than as a hauling service.
5. Self-Haul materials, which are delivered by a Customer directly to a transfer station or disposal facility in a manner consistent with City ordinances and codes and other applicable laws; provided, however, that this provision does not create an exemption from any law requiring payment for Collection services, whether those services are utilized or not.
6. Construction and Demolition Debris, except as provided in Article 3.2.A.8.
7. Bin Services, Debris Box Services and Compactor Services provided to manufacturing facilities, factories, food processors, refineries, and publicly operated treatment works, which are provided by private companies operating within the City on a non-exclusive basis.
8. Compactor rental and leasing services, which are provided by private companies operating with the City on a non-exclusive basis.

The provisions of this Agreement shall not preclude or prohibit the City or any officer or employee thereof or any employee of the State, or any governmental subdivision thereof, from Collecting, removing, and Disposing of Solid Waste from City or other public facilities.

### **3.5 CONTRACTOR FEE AND AB 939 FEE**

#### **A. Amount**

In consideration of the exclusive rights provided to the Contractor through this Agreement, Contractor agrees that the City is due the Contractor Fee. The Contractor shall pay to the City a Contractor Fee equal to twenty (20) percent of Gross Rate Revenues whether collected by the Contractor or the City. The Contractor shall also pay to the City an AB 939 Fee equal to three and one-half (3.5) percent of Gross Rate Revenues whether collected by the Contractor or the City.

The City reserves the right to modify the Contractor Fee and AB 939 Fee at any time during the Term of this Agreement, with a corresponding adjustment to the Rates. The City shall give the Contractor ninety (90) days notice prior to the date on which any such charge becomes effective.

#### **B. Payment by Contractor**

The Contractor shall compute and pay the Contractor Fee and AB 939 Fee on the basis of the Contractor's receipt of Gross Rate Revenues for each calendar month from Customers the

Contractor bills. The Contractor shall remit the Contractor Fee as part of the Monthly Remittance specified in Article 6.3. If the Contractor fails to pay the entire amount of compensation due the City through error or otherwise, the difference due the City shall be paid by the Contractor within thirty (30) days from discovery of the error or determination of the correct amount. In addition, the Contractor shall pay interest on any underpayment at the rate of ten percent (10%) per annum. Any overpayment to the City through error or otherwise shall be offset against the next payment due from the Contractor. Acceptance by the City of any payment due under this Article 3.5B shall not be deemed to be a waiver by the City of any breach of this Agreement, nor shall the acceptance by the City of any such payments preclude the City from later establishing that a larger amount was actually due, or from collecting any balance due to the City. In case of dispute between the City and the Contractor regarding any amounts due, the Contractor shall pay the amount claimed by the City as due and notify the City in writing at the time of payment as to any portion that is paid under protest, specifying the basis of its claim of overpayment.

### **C. Payment by City**

The City shall compute and retain the Contractor Fee and AB 939 Fee on the basis of the City's receipt of Gross Rate Revenues for each calendar month from the Customers the City bills. The City shall remit all remaining Rate Revenue to the Contractor as part of the Monthly Remittance specified in Article 6.3. If the City fails to pay the entire amount of compensation due the Contractor through error or otherwise, the difference due the Contractor shall be paid by the City within thirty (30) days from discovery of the error or determination by the City of the correct amount. In addition, the City shall pay interest on any underpayment at the rate of ten percent (10%) per annum. Any overpayment to the Contractor through error or otherwise shall be offset against the next payment due from the City. Acceptance by the Contractor of any payment due under this Article 3.5C shall not preclude the Contractor from later establishing that a larger amount was actually due, or from collecting any balance due to the Contractor.

### **3.6 GROWTH IN ACCOUNTS**

Contractor shall provide Collection Services to all Customers within the City requiring service during the Term and shall be compensated on a per-account basis by the then effective Rates.

### **3.7 GROWTH IN CITY SERVICES**

Contractor shall provide all City Services and Collection of public Containers as specified in Article 4 and Exhibit F, including as needed to address growth in Collection Materials generated within City, permanent or seasonal changes in Collection frequency as may be directed by City, and any new Collection sites or locations for City buildings and for public Containers that may be added in the future.

### **3.8 ANNEXATIONS**

The City shall promptly provide written notice to the Contractor regarding any geographic area that has been or that will be annexed to the City. Once such notice is given, the provisions of the Agreement including all the express or implied rights and responsibilities shall apply within the area of annexation. The Contractor shall provide Collection Services within the annexed area within ninety (90) days of receipt of written notice.

### **3.9 TITLE TO COLLECTED MATERIALS**

It is expressly understood that all Solid Waste, Recyclable Materials, Green Waste, Food Waste and street sweeping debris becomes the property of the Contractor at the point of

Collection, subject to the requirements of Article 4 to ensure proper delivery of specified Collection Materials to City designated and/or Contractor selected facilities.

### **3.10 AB 939 GOALS**

Contractor acknowledges that it shall provide a package of Collection Services, including particular Single-Stream Recycling, weekly Green Waste and Food Waste Collection, and enhanced Multi-Family and Commercial Recycling Services, with attendant public education and customer service programs that should be sufficient to achieve and maintain a level of Diversion for the City that is in compliance with the State's goal of fifty (50) percent diversion. Contractor further acknowledges that, notwithstanding Section 40059.1 of the California Public Resources Code, Contractor may at the sole discretion of the City be subject to liquidated damages for failure to achieve the Diversion Requirements specified in Exhibit J.

### **3.11 MUNICIPAL ENFORCEMENT**

Contractor shall become familiar with all City ordinances and codes related to the provision of Collection Services, and shall as requested assist the City in its enforcement responsibilities by promptly notifying the City Representative of any third party violations of these ordinances and codes observed by Contractor, and by promptly providing City any related information it may have.

### **3.12 EMERGENCY SERVICES**

Notwithstanding the provisions of Article 3.2 specifying Contractor scope of services, in the event of a declared emergency, the City reserves the right to use City staff, agents, contractors, and/or subcontractors as necessary to clear debris from the Collection Services Area. Contractor agrees to not contest the City's use of other parties to collect, transport, and dispose of any debris resulting from such emergency. In the event of a declared emergency, the Contractor shall upon notice from the City make all reasonable effort to provide vehicles and crews to assist in clearing and/or transporting debris. To the extent that provision of such service clearly exceeds the City Services detailed in Article 4.10, the Contractor shall be compensated for the additional services as provided in Article 5.7.

### **3.13 INFORMATION MANAGEMENT SYSTEMS**

The Contractor shall maintain such information management systems as are needed to collect, store, and organize operational and financial data, and to produce the reports and plans as specified in this Agreement. All data shall be backed up so as to ensure no loss of data due to computer failure.

### **3.14 CONDITIONS TO EFFECTIVENESS OF AGREEMENT**

In entering into this Agreement and performing obligations set forth therein, the City is relying on the conditions set forth below. The obligation of the City to permit this Agreement to become effective is subject to the satisfaction of each and all of the conditions set out below, each of which may be waived in whole or in part in writing by the City. Waiver of any of the following as a condition to the effectiveness of the Agreement does not preclude the City from pursuing any claim or breach of this Agreement.

#### **A. Accuracy of Representations**

The representations and warranties made by the Contractor in Article 2 of this Agreement are true and correct on and as of the Signature Date.

732 **B. Absence of Litigation**

733 There is no litigation pending on the Signature Date in any court challenging the award or  
734 execution of this Agreement or seeking to restrain or enjoin its performance. The Contractor  
735 shall notify the City in writing within thirty (30) days of the Contractor's becoming aware of any  
736 litigation that may in any way affect its performance of the Collection Services.  
737

738 **C. Effectiveness of City Council Action**

739 A City Council Resolution approving this Agreement shall become effective pursuant to  
740 Applicable Law on or prior to the Signature Date.  
741

742 **D. Verification of Insurance Coverage and Performance Assurances**

743 The Contractor shall submit no later than thirty (30) days prior to the Effective Date, and shall  
744 maintain to the satisfaction of the City, endorsements of insurance coverage pursuant to Article  
745 9.5 performance bond, letter of credit or other performance assurance pursuant to Article 9.6.  
746

747 **E. Payment of Certain Costs**

748 The Contractor shall pay \$25,000 in full within thirty (30) days prior to the Effective Date and  
749 separate from all other remittances, to defray the City administrative expenses related to the  
750 award of these Collection Services.  
751

752 **F. Contractor Consideration for Entering Into Agreement**

753 In consideration for the City granting the Contractor the right to enter into this Agreement,  
754 Contractor agrees to pay the fee of \$3.9 million payable on a monthly basis over the first five  
755 years of the Term of the Agreement in the following manner to the City: \$1.3 million in 2004,  
756 \$1.04 million in 2005, \$780,000 in 2006, \$520,000 in 2007, \$260,000 in 2008.  
757

758 The Contractor shall pay \$600,000 in full within thirty (30) days prior to the Effective Date and  
759 separate from all other remittances, for the purchase of City garden refuse and street sweeping  
760 equipment.  
761

762 The Parties agree that the fees paid by the Contractor to the City in accordance with this  
763 Section constitute an essential part of the overall consideration for this Agreement.  
764

765 **G. Labor Matters**

766 The City shall have: (i) reached agreement with the union(s) representing the City's garden  
767 refuse and street sweeping program employees regarding the transfer of garden refuse  
768 collection and street sweeping work from the City to the Contractor; (ii) completed its obligation  
769 to bargain in good faith with the union(s) representing the City's garden refuse and street  
770 sweeping employees regarding the transfer of the garden refuse pick-up and street sweeping  
771 work from the City to the Contractor.  
772

773 **H. Corporate Guarantee**

774 On or before May 15, 2003, the Contractor shall provide a guarantee or other assurance  
775 acceptable to the City from Contractor's ultimate parent company, or other parent company  
776 acceptable to the City, guaranteeing or assuring performance under this Agreement by  
777 Contractor. The guarantee will be incorporated into this Agreement as Exhibit O.  
778

779 **I. Implementation and Customer Service Plan**

780 On or before June 1, 2003, the Contractor shall provide the City with an Implementation and  
781 Customer Service Plan (to be included as Exhibit M). The City shall review and comment on the

plan by June 15, 2003. The Contractor shall finalize the plan for City approval by July 1, 2003. The Contractor shall not undertake significant implementation steps without City's approval of the plan (which will not be unreasonably withheld). At a minimum, the Contractor shall provide milestones and deadlines describing in detail the Collection Services rollout such that all services will commence on or before June 1, 2004. Specifically, the Contractor shall provide details on its customer service plan to inform Customers of the new or modified Collection Services and to respond to questions and concerns.

The Contractor shall list the staffing levels for customer service, public education, and Recycling and Food Waste technical assistance. The Contractor shall provide a rollout schedule for ordering and delivering all Carts and Bins prior to June 1, 2004.

The Contractor shall list the public outreach materials to be developed for distribution to all Customers and the mailing/delivery dates for each publication.

The Contractor shall describe and provide a sample of the proposed colors for each Cart for Collection of Solid Waste, Recyclables, and Green Waste and Food Waste.

#### **J. Cooperation Agreement**

The Contractor shall provide a fully executed cooperation agreement (to be included as Exhibit N) subject to review by the City which specifies how it will work cooperatively to, at a minimum address the following:

1. Provide the shared services (including Special Events, neighborhood cleanups, community cleanups, Collection at City facilities, Collection from public litter cans and Recycling Bins) as required under this Agreement,
2. Select Cart colors for Solid Waste, Recycling and Green Waste and Food Waste Collection Services,
3. Provide the method for dividing annex territory.
4. Synthesize public outreach materials to promote continuity of Citywide programs.



**ARTICLE 4**  
**SCOPE OF SERVICES**

**4.1 SINGLE-FAMILY SERVICE**

The following package of services is to be provided by the Contractor to single-families. All materials are to be collected at the curb, on a weekly basis on the same day.

**A. Refuse Collection**

Collection of Refuse using approximately thirty (30) gallon Carts or optional sixty (60), or ninety (90) gallon Carts.

**B. Single Stream Recyclables Collection**

Collection of the Recyclables specified in Exhibit A, using approximately sixty (60) gallon Carts as the default size for basic service, or optional thirty (30) or ninety (90) gallon Carts at Customer request.

**C. Green Waste and Food Waste Collection**

Collection of Green Waste using approximately ninety (90) gallon Carts or optional additional ninety (90) gallon Carts as determined by the Customer at no additional charge.

Contractor shall provide Bin Service to single-family Customers, if requested.

Contractor shall bill each Customer according to the size Container used for Refuse Service, as provided in Exhibit I, regardless of the Recycling Cart and Green Waste Cart sizes requested by the Customer.

**4.2 MULTI-FAMILY SERVICE**

The Contractor shall provide multi-family Customers with a choice of Bin Service or Cart Service. As provided in Article 6.1, the Contractor will bill each multi-family account at the rate for Bin service billed to owner, or Cart Service billed to the individual resident, whichever is less based on relative Container volumes. Contractor shall provide all multi-family Customers with the minimum level of Single Stream Recycling Service specified in Exhibit A as well as a minimum level of Green Waste and Food Waste Service as specified in Exhibit A.

**4.3 COMMERCIAL SERVICE**

Contractor shall provide commercial Customers with a choice of Bin Service or Cart Service. Each Service package shall include the minimum level of Single Stream Recycling Service specified in Exhibit A as well as a minimum level of Green Waste and Food Waste Service as specified in Exhibit A. In providing Commercial Service the Contractor may levy Special Charges as provided in Article 6.1.

**4.4 DEBRIS BOX AND COMPACTOR SERVICE**

Contractor shall provide on-call and regularly scheduled Debris Box and Compactor Service to residential and commercial Customers requesting the service for the Rates as provided in Exhibit I, and as they are adjusted over the Term. In providing Debris Box and Compactor Service to residential and commercial Customers the Contractor may levy Special Charges as provided in Article 6.1. Contractor shall fully cooperate with, and as requested assist the City in developing and fully implementing a Construction and Demolition Debris ordinance, should the City develop one.

## **4.5 STREET SWEEPING AND SEASONAL LEAF COLLECTION**

### **A. General**

Street sweeping services are to be provided by the Contractor, or by the approved subcontractor, specified in Exhibit H. the Contractor shall ensure that street sweeping is provided bi-weekly (every other week) on all City streets as provided in Exhibit H, and three times per week in the downtown area. Contractor shall develop and maintain a street sweeping schedule that ensures that street sweeping does not occur on the same day as Cart Collection. Unless otherwise approved by the City, street sweeping shall occur on the next Working Day following Cart Collection or seasonal leaf Collection, except that street sweeping shall be provided on Monday for areas in which Cart Collection is provided on Friday. The Contractor's street sweeping schedule is subject to review by the City, and the Contractor shall make all reasonable efforts to accommodate any requested changes.

### **B. Seasonal Leaf Collection**

Seasonal leaf collection services are to be provided by the Contractor, or by the approved subcontractor, as specified in Exhibit H. Contractor shall ensure that seasonal leaf collection is provided bi-weekly (every other week) on all City streets from October 1 to December 31 of each year, as provided in Exhibit H.

### **C. Other Services**

Contractor shall also provide street sweeping as specified in Articles 4.12 and 4.13. Contractor shall also provide street sweeping services on an on-call basis for Special Events defined in Exhibit G.

### **D. City Changes in Service**

The City reserves the right to change the required frequency of street sweeping for some or all City streets, which shall be considered a Change in Scope. The City shall provide the Contractor with sixty (60) days notice of any change in street sweeping frequency or location, and an appropriate increase or decrease in Rates shall be established as provided in Article 7.4.

## **4.6 FREE NEIGHBORHOOD CLEANUP**

The Contractor shall provide free neighborhood cleanup services during each calendar year for each residential Customer. The Contractor shall provide curbside Collection, Recycling and Disposal for Bulky Items, including furniture, appliances, electronics, televisions and monitors, and up to six containers of Solid Waste and Green Waste, and up to five tires.

Contractor also shall provide the equivalent of up to six (6) forty (40) cubic yard Debris Boxes at each of five (5) neighborhood collection events held throughout the City. Contractor shall advertise the availability of this service as provided in Exhibit E. Contractor shall make Best Efforts to Recycle or Divert from Disposal fifty percent (50%) of all materials collected through the neighborhood cleanup program and collection events.

## **4.7 ON-CALL BULKY ITEMS PICK-UP**

Upon notice by a Customer, Contractor will schedule a pick-up of Bulky Items or other Solid Waste or Green Waste. Contractor shall make all reasonable efforts to Recycle or to provide reuse opportunities for the materials collected on-call and specified in Exhibit A, and shall transport remaining materials to the Designated Disposal or Transfer Facility. Contractor will



provide on-call pick-ups as requested within any calendar year for the Special Charge provided in Exhibit I.

#### **4.8 CHRISTMAS TREE COLLECTION**

Contractor will Collect Christmas trees placed at the curb on regular Collection days. Contractor shall provide this pick-up service on the regular day of Collection service each year from December 26 through January 15. The Contractor shall transport all Collected Christmas trees to a Green Waste Processing Facility.

#### **4.9 FREE SIDE YARD SERVICE**

The Contractor shall provide free side-yard residential Service to disabled or frail elderly Customers that (1) are physically unable to move Carts as verified by a medical certificate and (2) annually sign a sworn statement that they live in a residence with no other residents capable of moving Carts.

#### **4.10 COLLECTION SERVICE FOR CITY FACILITIES**

The Contractor will provide free Solid Waste, Recyclables, and Green Waste and Food Waste Collection Services for the facilities listed in Exhibit F. Free service may require provision of Bins, Carts, or Debris Boxes. Contractor will service City-provided Compactors, as requested. Contractor will assist City staff in selecting the Container type, size and Collection frequency that best meets their needs. This service is to be provided with no additional compensation to the Contractor.

#### **4.11 COLLECTION FROM PUBLIC CONTAINERS**

As specified in Exhibit A, Contractor will provide Collection service seven (7) days per week for all Solid Waste and Recycling Containers located in public areas of the City, with an emphasis on maintaining a pleasing appearance at all times and avoiding overflow conditions. This service is to be provided with no additional compensation to the Contractor.

#### **4.12 SERVICES AT SPECIAL EVENTS**

Contractor shall provide Solid Waste and Recyclables Collection, and port-o-let (mobile toilet facilities) for the Special Events listed in Exhibit G. Contractor shall provide the number and type of Containers and port-o-let facilities, the amount of labor, and the frequency of the emptying or removal of the Containers and port-o-let facilities, necessary to provide services of a quality matching or surpassing that defined in Exhibit B for all Collection Services. Contractor shall also provide street sweeping immediately after each event, as needed. This service is to be provided with no additional compensation to the Contractor.

#### **4.13 COMMUNITY CLEANUP EVENTS**

In coordination with the City, and as further specified in Exhibit A, Contractor shall provide necessary Containers and Collection Services for up to five (5) City-sponsored community cleanups per year. Contractor shall also provide street sweeping immediately after each event, as needed. This service is to be provided with no additional compensation to the Contractor.

#### **4.14 TRANSPORT AND DISPOSAL OF SOLID WASTE**

Contractor shall transport Solid Waste to the Designated Disposal or Transfer Facility for transfer and/or Disposal, and is responsible for payment of all transport and Disposal charges from the Rates. As of the Effective Date, the Designated Disposal or Transfer Facility, as selected by the Contractor is the Forward Inc. Landfill. In addition, the Landfill Sale Agreement requires the Contractor to use the Forward, Inc. Landfill through August 31, 2007 with specific

terms and conditions for doing so. Contractual responsibility for use of the Designated Disposal or Transfer Facility including but not limited to all payment for such service becomes the sole responsibility of the Contractor as of September 1, 2007. City may at its sole discretion direct the Contractor to use a different Disposal or Transfer Facility. Any City designation of a different Designated Disposal or Transfer Facility(ies) shall be considered a Change in Scope and shall be subject to the provisions of Article 5.7.

#### **4.15 RECYCLING TRANSPORTATION, PROCESSING AND MARKETING**

The Contractor shall provide for the transportation, processing and marketing of all Recyclable Materials collected within this Agreement. The Contractor shall use Recycling Facilities of its own choosing, but shall ensure that processing and marketing occurs in a manner that results in Residue requiring Disposal equal to no more than ten (10) percent by weight of the original weight of the collected Recyclable Materials, and that any Residue is delivered to a permitted disposal facility for proper Disposal. As specified in Article 8, Contractor's reports to City will include specified information on the use of Recycling Facility(ies).

#### **4.16 TRANSPORT AND PROCESSING OF GREEN WASTE AND FOOD WASTE**

Contractor shall provide for the transportation, processing and marketing of all Green Waste and Food Waste for use as compost, mulch, alternative daily cover, or other forms of beneficial reuse, and is responsible for payment for these services from the Rates. City may at its sole discretion direct the Contractor to use a different Green Waste Processing Facility. Any City designation of a different Green Waste Processing Facility(ies) shall be considered a Change in Scope and shall be subject to the provisions of Article 5.7.

#### **4.17 USE OF LOW EMISSION VEHICLES**

Contractor shall convert to full use of Low Emission Vehicles by June 1, 2009. This requirement extends to all vehicles used by the Contractor in performing all services and obligations under this Agreement, including Collection vehicles, transfer vehicles, street sweeping and leaf collection vehicles. However, the Contractor is not required to convert light trucks or automobiles used by the Contractor in performing the services required under this Agreement to Low Emission Vehicles. Contractor has complete responsibility and discretion for choosing how to meet this requirement. As specified in Article 7.4B, any costs related to changes in Federal or State requirements, or in technology, or in any other aspect of Low Emission Vehicles, including but not limited to their design, production, fueling, use and maintenance are not eligible items for consideration for a special rate review.

If Contractor makes good faith efforts to convert the fleet to Low Emission Vehicles within the five-year period from June 1, 2004 to May 31, 2009, but is reasonably prevented from doing so by a regulatory change with regard to low emission technologies or standards, Contractor may request City to adjust the period in which to convert the fleet. City shall, in its sole discretion, determine whether such a request is justified by the circumstances prevented.

#### **4.18 COLLECTION SERVICE OVERAGES**

Each residential Customer shall be eligible to receive twelve (12) certificates, stickers or overage bags for placement of Collection Materials in excess of Customer's service levels for Collection on Customer's regular service day. Collection Service overages may include excess Solid Waste, excess Green Waste and Food Waste, or excess Recyclables. Contractor shall provide a method for identifying which excess services are being used by the Customer and shall segregate the overages appropriately. Contractor shall coordinate with the City as necessary with regard to City billing of residential Customers. Contractor will collect up to twelve

1014 (12) Collection Service overages per year from each residential Customer without additional  
1015 charge or compensation.



**ARTICLE 5**  
**OTHER COLLECTION SERVICES**

**5.1 CONSUMER INFORMATION AND PUBLIC EDUCATION**

Exhibit E contains the final version of the Contractor's detailed Public Education plan. The Public Education plan specifies the minimum standards for Contractor performance of these activities in a proactive, timely, and professional manner. All materials and messages shall be conveyed in English and Spanish. The Contractor acknowledges the importance throughout the Term of developing, and maintaining consistent effort in conducting the activities detailed in the Public Education plan, and in particular the role of information and education in successful implementation of Single Stream Recycling, enhanced multi-family and commercial Recycling Services, and weekly Green Waste and Food Waste Collection. Contractor's information and education efforts are also crucial in ensuring that Customers are fully aware of all services to which they are entitled as specified in this Agreement, including but not limited to Christmas tree Collection, side-yard service for frail elderly and disabled Customers, and the free neighborhood cleanup program. The Contractor further acknowledges its responsibility, and the important role of the the Contractor's consumer information and public education efforts, in causing the City to reach and maintain an AB 939 diversion level of fifty (50) percent or above.

**5.2 CUSTOMER SERVICE AND ACCESSIBILITY**

**A. General**

The Contractor acknowledges that the City expects provision by the Contractor of highly professional and courteous customer service. Exhibits A and E contain requirements for provision of Customer service as provided in the Contractor's proposal, in addition to those contained in this Article 5.

**B. Telephone**

Contractor shall maintain a toll-free telephone number for Customer service. The Contractor shall provide all specified services in English and Spanish. The Contractor shall install and maintain telephone equipment, and have available service representatives sufficient to handle the volume of calls typically experienced on the busiest days. Dedicated customer service representatives shall be available to answer calls from 8 a.m. to 5 p.m., Monday through Friday. The Contractor shall also maintain an after-hours telephone message system to take calls received other than during normal business hours. The Contractor shall provide the City a means of contacting a representative of the Contractor on a 24-hour basis.

**5.3 SERVICE COMPLAINTS AND RESOLUTION**

**A. General**

The City expects Customers to receive a high level of Customer service that is provided in a professional, timely, and courteous manner.

**B. Customer Complaint Log**

The Contractor shall maintain a written log of all oral and written service complaints registered with the Contractor from Customers within the City ("Complaint Log"). The Contractor shall be responsible for prompt and courteous attention to, and prompt and reasonable resolution of, all Customer complaints. The Contractor shall record in the Complaint Log all written and oral complaints, noting the name and address of complainant, date and time of complaint, nature of

complaint, identity of supervisor, and nature and date of resolution. Such log shall be kept so that it may conveniently be inspected by representatives of the City upon written request. Such log shall be retained by the Contractor for three (3) years following the end of the year in which the complaint was made.

### **C. Resolution of Complaints**

Contractor shall respond to all Customer complaints within twenty-four (24) hours, Sundays and holidays (as specified in Exhibit A) excluded. Contractor shall make best efforts to resolve all complaints within ten (10) Working Days, with the following exceptions:

1. **Missed Customer Pick-Ups-** If a complaint involves a missed pick-up of Solid Waste, Recyclables or Green Waste and Food Waste provided by the Customer for Collection in accordance with City codes and ordinances, the Contractor shall Collect the Solid Waste, Recyclables or Green Waste and Food Waste in question by the same day if the complaint is received by 12 Noon, or by 12 Noon the following Working Day if the complaint is received after 12 Noon.
2. **City or Public Pick-Ups-** If a complaint involves a failure to collect Solid Waste, Recycling or Green Waste and Food Waste from a Container provided for City services, or emptying of a public Solid Waste or Recycling Container in order to avoid overflow, Contractor shall Collect the Solid Waste, Recyclables or Green Waste and Food Waste in question by the same day if the complaint is received by 12 Noon, or by 12 Noon the following Working Day if the complaint is received after 12 Noon.
3. **Street Sweeping-** If a complaint involves failure to sweep scheduled streets or parking lots, the Contractor shall sweep the streets or packing lots in question by the same day if the complaint is received by 12 Noon, or by 12 Noon the following Working Day if the complaint is received after 12 Noon.

## **5.4 CHANGE IN COLLECTION OPERATIONS, ADMINISTRATION, OR SCHEDULE**

### **A. City Notice**

Changes to Solid Waste, Recycling and Green Waste and Food Waste Collection routes or Collection days, or other changes to Collection operations that have possible potential to create Customer confusion, are subject to prior approval of the City Representative, which shall not be unreasonably withheld. The City shall respond to such a request within five (5) business days of the request from the Contractor. A change in Collection route or day is defined as any change that affects more than five (5) percent of customers.

### **B. Customer Notice**

The Contractor shall make the following notifications regarding any changes in service:

1. Notify all affected residential Customers (single-family and multi-family) at least fourteen (14) calendar days prior to any change in their scheduled day of Solid Waste, Recyclables and Green Waste and Food Waste Collection. Contractor shall not permit any residential Customer to go more than seven (7) calendar days without service in connection with a Collection schedule change, excluding scheduled holidays.
2. Notify all affected commercial Customers at least five (5) calendar days prior to any change in service. Except by prior arrangement with the Customer, no change in service shall temporarily reduce the weekly frequency of Collection.

## **5.5 REPORT ACCUMULATION OF SOLID WASTE: UNAUTHORIZED DUMPING AND CESSATION OF SERVICE**

The Contractor shall direct its employees to note and report any City address at which they observe significant and/or ongoing accumulation of Solid Waste that is not being delivered for Collection. The Contractor shall also direct its employees to note and report any City address or location at which Solid Waste has been apparently dumped in a manner that does not conform to City codes and ordinances. The Contractor shall notify the City Representative within three (3) Working Days of the address or location of any accumulation or dumping.

## **5.6 HAZARDOUS WASTE**

### **A. General**

If the Contractor determines that waste placed in any Container for Collection or delivered to any facility is Hazardous, Medical or Infectious Waste, or other waste that may not legally be disposed of at the Designated Disposal and Transfer Facility or presents a hazard to Contractor's employees, the Contractor shall have the right to refuse to accept such waste. The Customer shall be contacted by the Contractor and requested to arrange proper disposal. If the Customer cannot be reached immediately, the Contractor staff shall, prior to leaving the premises, leave a tag indicating the reason for refusing to collect the waste.

### **B. Ownership of Hazardous Waste**

The Parties agree and intend that upon Collection all Collection Materials (not including Hazardous Waste or other waste that Contractor is prohibited from collecting under its governmental permits) becomes the property of Contractor. All other materials (including Hazardous and other waste that the Contractor is prohibited from collecting under its governmental permits) shall remain the property of the Customer that disposed of such materials, which shall remain solely responsible for such materials, including without limitation for their transportation and disposal, retrieval of such materials from any location to which the Contractor may have transported them and for any and all damages, losses, liabilities, fines, penalties, forfeitures, claims, demands, actions, proceedings or suits arising out of relating to the generation, transportation, handling, cleanup, remediation or disposal of or with respect to such materials.

### **C. Hazardous Waste Disposal Responsibility**

If Hazardous Waste is nonetheless Collected by the Contractor during the Contractor's normal Collection Service and the Customer cannot be identified or fails to remove the waste after being requested to do so, the Contractor shall arrange for its proper disposal at no cost to the City. The Contractor shall make a good faith effort to recover the cost of proper disposal from the Customer, and the cost of this effort as well as the cost of disposal shall be chargeable to that individual or entity. If the Customer cannot be identified, the Contractor shall absorb the cost of proper disposal. The Contractor shall report any such disposal cost in writing to the City within forty-eight (48) hours of the date and time incurred.

## **5.7 CHANGE IN SCOPE**

### **A. General**

The City may require a Change in Scope, consisting of changes in, or modifications to existing Collection Services, or a request that the Contractor provide new services; or may consider a Contractor request for a Change in Scope.

1. Should the Change in Scope result in documented increases in Contractor's operating or capital expenses, the City shall increase Rates as provided in Article 7.4 as necessary to compensate Contractor for the additional documented expenses, including an increase in profit equal to ten (10) percent of the portion of increased expenses that are not pass-through expenses (e.g., not such expenses as facility tipping fees, including associated regulatory and/or surcharges).
2. Should the Change in Scope result in documented decreases in Contractor's operating or capital expenses, the City shall decrease Rates, as provided in Article 7.4, as necessary to reflect such decrease in costs, including a decrease in profit equal to ten (10) percent of the portion of reduced expenses that are not pass-through expenses (e.g., not such expenses as facility tipping fees, including associated regulatory and/or surcharges).

#### **B. Good Faith Negotiation**

In the event of a Change in Scope, the Parties agree to negotiate in good faith to determine the applicable distribution for the reasonable costs of reviewing the proposed Change in Scope, and for the resulting increase or decrease in Rates. Contractor shall promptly provide any documentation reasonably requested by the City as necessary to identify and quantify any added or reduced expenses related to the Change in Scope. Either Party may, at its own cost, seek independent third-party assistance in determining the nature of any costs or savings. All determinations of added or reduced expenses shall be based on reasonable industry standards and averages for providing such services. If a Change in Scope results in a reduction or shift in equipment needs, to minimize capital expenditures, the Contractor, including a parent or any affiliates, shall make its best efforts to redeploy or sell vehicles, Containers, equipment, and materials that are not fully amortized. With regards to any Change in Scope, the City reserves the right to adjust the Contractor's compensation through an alternative method, such as a one-time or phased lump sum payment from the City to the Contractor, or from the Contractor to the City.



**ARTICLE 6**  
**BILLING, COLLECTION, AND REMITTANCE**

**6.1 BILLING RESPONSIBILITIES**

**A. General**

The Contractor is responsible for billing and collecting Rates for all Collection Services provided to multi-family and commercial Customers. Acting as the agent of the Contractor, the City accepts the responsibility of billing and collecting Rates for all Collection Services provided to single-family Customers, including those for special services contained in Exhibit I. The Contractor shall not charge any amount in excess of the Rates for any services required or permitted to be performed by the terms of this Agreement. The Rates are those set forth in Exhibit I, "Schedule of Rates," or as they may be adjusted by the City during the Term.

**B. Specific Requirements**

In billing the Rates, Contractor shall:

1. Bill Customers that receive Multi-Family Service at the Rate for Bin Service or Cart Service, whichever is less based on relative Container volumes. Bin Service should be compared to Cart Service by calculating the nearest gallon size of the former with 1 cubic yard equal to 224 gallons. Thus, for example, a two (2) cubic yard Bin shall be billed at the lesser of the two (2) cubic yard Bin Rate, or the lowest cost combination of Rates for approximately thirty (30), sixty (60), and ninety (90) gallon Carts.
2. Levy Special Charges as provided in the Exhibit I. Special Charges shall not be levied without prior notification to the Customer.
3. Not bill for side-yard service for eligible Customers as specified in Article 4.9 and Exhibit A.
4. Not bill for services provided for neighborhood cleanup services, to City facilities, for Collection from public Containers, for Special Events, or for community cleanup events as provided in Articles 4.6, 4.10, 4.11, 4.12, and 4.13, respectively, and in Exhibits A, F and G.

All Bin Customers shall be billed monthly, in advance of service. Cart Customers may be billed in advance on a monthly or every three months basis, at the Contractor's discretion. All Customer invoices are due and payable within 30 days of the invoice date.

**6.2 RECEIPT OF PAYMENT**

The Contractor shall deposit all amounts received from multi-family and commercial Customers into a special account to be established by the Contractor entitled "City of Stockton Gross Rate Revenues."

**6.3 CONTRACTOR'S MONTHLY BILLING STATEMENT AND REMITTANCE**

For each month the Contractor shall prepare and provide to the City a monthly statement and a Monthly Remittance by the 20<sup>th</sup> day of the following month. The monthly statement shall include the following information and calculations for the Monthly Remittance.

**A. Gross Rate Revenues**

All Rate Revenues collected by the Contractor from multi-family and commercial Customers during that month for current and past due accounts are to be reported as Gross Rate Revenues. Documentation should be provided to support the Gross Rate Revenues. Documentation should include the number of accounts for each Rate and total number of Customers billed for each Special Charge.

**B. Contractor Fee and AB 939 Fee**

The Contractor shall present the Contractor Fee calculations and the amount of the monthly Contractor Fee and AB 939 Fee obligation. The Contractor Fee shall be calculated as follows:

Contractor Fee = 0.20 x Gross Rate Revenues

The AB 939 shall be calculated as follows:

AB 939 Fee = 0.035 x Gross Rate Revenues

**C. Liquidated Damages**

Any Liquidated Damages the Contractor is obligated to pay to the City, as provided for in Article 10.1 and Exhibit J shall be reported for the month. As noted in Article 6.4, City has the right to retain any Liquidated Damages from Rate Revenue otherwise due to the Contractor.

**D. Other Payments**

Any other payments due to the City, such as the cost of performance reviews or audits.

**E. Monthly Remittance**

The Monthly Remittance to the City shall be calculated as follows:

Monthly Remittance = City fees (Contractor Fee and AB 939 Fee)+ Liquidated Damages

**F. Illustration**

For example, for illustrative purposes only assume that:

1. Gross Rate Revenues for the month equals \$100,000 which is the sum of \$90,000 from current monthly billings and \$10,000 from past due accounts.
2. Contractor Fee           = 0.20 x Gross Rate Revenues  
                                  = 0.20 x \$100,000  
                                  = \$20,000
3. AB 939 Fee             = 0.035 x Gross Rate Revenues  
                                  = 0.035 x \$100,000  
                                  = \$3,500
4. Liquidated Damages due for the month are \$100.
5. Monthly Remittance   = \$20,000 + \$3,500 + \$100  
                                  = \$23,600

#### **6.4 CITY'S MONTHLY BILLING STATEMENT AND REMITTANCE**

For each month the City shall prepare and provide to the Contractor a monthly statement and a Monthly Remittance by the 20<sup>th</sup> day of the following month. The monthly statement shall include the same information and calculations for the Monthly Remittance, and be presented in the same format as specified in Article 6.3 for the Contractor's remittance to the City, except that the City will not owe any Liquidated Damages to the Contractor. In addition, the City has the right to retain any Liquidated Damages from Rate Revenue otherwise due to the Contractor.

##### **A. Senior Below Median Income Residential Cart Collection Rate**

The City shall not, when calculating the monthly statement, use the Senior Below Median Income Residential Cart Collection Rate schedule, as shown in Exhibit I, for purposes of providing the Contractor with the Monthly Remittance. Instead, the City shall provide the Contractor the Rate applicable to the Senior Residential Cart Collection Rate for all Rates collected by the City under the Senior Below Median Income Residential Cart Collection Rate schedule.

#### **6.5 DISPUTES REGARDING REMITTANCES**

If either Party disputes any amount remitted by the other Party as part of any Monthly Remittance, the Party disputing the amount shall provide the other Party with written objection indicating the reasons for the objection to or disagreement with such amount. If the Parties are not able to resolve such dispute within 30 days after the disputing Party's objection, either Party may refer such dispute to the dispute resolution process specified in Article 11.6. Nothing contained in this Article 6.5 shall limit the City or any authorized officer of the City or any other governmental agency from raising a further objection to any amount billed by the Contractor pursuant to an audit conducted pursuant to Article 6.7.

#### **6.6 CONTRACTOR RESPONSIBILITY FOR BAD DEBT AND DELINQUENT PAYMENTS**

The Contractor shall solely bear all expenses and losses related to collecting or failing to collect bad debt from delinquent multi-family and commercial accounts. Notwithstanding the foregoing, the Contractor Fee and AB 939 Fee shall be based only on Gross Rate Revenues actually collected by the Contractor and shall not reflect any delinquent accounts, bad debts or other uncollected amounts. Upon reasonable effort to collect delinquent payments, the Contractor may stop service to Customers with delinquent accounts.

#### **6.7 AUDIT OF BILLINGS AND FINANCIAL REPORTS; REVIEW OF COSTS**

##### **A. Scope of Audit**

The City may at its sole discretion select a qualified independent firm to perform up to five audits during the Base Term. The frequency and timing of the audits shall be determined at the City's sole discretion. The City shall provide the Contractor sixty (60) days notice of each audit. The City shall determine the scope of any audits based on the general requirements specified below and may elect to conduct either one or both of the following types of audit:

1. **Audit of Billings.** The auditor shall review the billing practices of the Contractor with relation to delivery of Collection Services. The intent of this audit is to use sampling to verify that Customers are receiving the type and level of service for which they are billed.

- 1339       2. **Audit of Revenue Reporting.** The auditor shall review relevant financial reports and  
1340       data submitted by the Contractor pursuant to Article 8. The purpose of this audit is to  
1341       verify that the Contractor is correctly calculating Gross Rate Revenues, and is properly  
1342       remitting Contractor Fees, AB 939 Fees and Liquidated Damages.  
1343

1344       **B. Cost of Audit**

1345       The Contractor shall bear the expense of the audit up to a maximum limit of \$20,000 per  
1346       occurrence, except that if, in the opinion of the City, an initial level of audit indicates possible  
1347       problem areas that require further review by the auditor, the Contractor shall bear all such  
1348       reasonable additional cost.  
1349

1350       **C. Review of Costs.** In conjunction with or separate from an audit, the City may review any  
1351       costs and revenues related to any Change in Scope or special Rate review. Apportionment of  
1352       the cost to each Party of any review of cost or revenues beyond the normal scope of an audit,  
1353       or as defined in paragraph A., and associated with a Change in Scope or special Rate review is  
1354       as specified in Articles 5.7 and 7.4, respectively.

**ARTICLE 7**  
**CONTRACTOR COMPENSATION AND CUSTOMER RATES**

**7.1 RATES**

The Rates contained in Exhibit I ("Schedule of Rates") are the only compensation to Contractor for provision of Collection Services. Contractor shall bill and collect payment for Multi-Family and Commercial Services and City shall bill and collect payment for Single Family Services in accordance with the Rates set forth in Exhibit I and pursuant to Article 6. Contractor shall identify Residential Customers eligible for the Senior Rates as set forth in Exhibit I, and notify City. Qualification shall be based on Customer's demonstration that the Customer has reached sixty-five (65) years of age. The City shall be solely responsible for qualifying Customers under the Senior Below Median Income Rate schedule.

**7.2 ADJUSTMENT OF RATES**

**A. Annual Adjustment**

Notwithstanding the provisions of Section 7.4 and subject to the terms herein, the Contractor is entitled to one Rate adjustment annually beginning June 1, 2005. Contractor's request for an adjustment shall be prepared in a format approved by the City Representative, and is to be submitted to City by each January 1 beginning with January 2005. Each adjustment is to be based on data from a previous twelve (12) month period as specified in this Article 7.2, is to be approved by the City with good faith effort by March 1 of each year, and will be effective on each subsequent June 1. Each component is adjusted as specified in this Article 7.2.

**B. Adjustment of the Rate**

Each Rate shall be adjusted up or down to reflect the product of the change in the annual inflation rate measured as the percentage increase in the Consumer Price Index (CPI) over the previous twelve (12) months. Each year's rate adjustment shall be calculated using the actual change in the CPI for the twelve (12) month period beginning with October of the year two years prior to the year in which the Rate adjustment is to take effect, and ending with the October of the year immediately proceeding the year in which the Rate adjustment is to take effect. Thus the calculation of the change in the CPI for a Rate adjustment taking effect on June 1, 2005 shall be for the period October, 2003 through, October, 2004. The applicable CPI is then adjusted by the percentage of the CPI (CPI Adjustment Factor), which is 50 percent. The adjusted Rate shall be calculated as follows:

$$\text{Adjusted Rate} = [((\text{Current CPI}/12\text{-month actual CPI}) - 1) \times \text{CPI Adjustment Factor}] + 1 \times \text{Current Rate}$$

For example, assume:

1. The Rate for Commercial Bin Service, three (3) cubic yards collected once per week is \$100.00 per month.
2. The CPI Adjustment Factor is 0.50
3. Current CPI = 123.
4. 12-month actual CPI = 118.8

Then the adjusted CPI Component is calculated as follows:

$$\text{Adjusted Rate} = \frac{[(123/118.8) - 1.00] \times 0.50}{1} + 1 \times \$100 = \$101.77$$

### **C. Change in the CPI Index**

If the CPI is discontinued or revised during the Term by the United States Department of Labor, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the CPI had not been discontinued or revised.

## **7.3 APPROVAL AND NOTICE OF ADJUSTED RATES**

The City shall act in good faith to approve adjusted Rates on each March 1, beginning with March 1, 2005, to be effective the following June 1 beginning with June 1, 2005. Contractor shall provide all Customers with advance written notice of approved Rate adjustments, in the form of a bill insert or notification on the invoice at least thirty (30) days prior to the effective date of each Rate adjustment.

## **7.4 SPECIAL RATE REVIEW**

### **A. Eligible Items**

Notwithstanding the schedule for annual Rate adjustments described in Section 7.2 and subject to the terms herein, the Contractor is entitled to apply to the City for consideration of a special rate review, or the City may initiate such a review should one or more of the following occur:

1. Material changes in the net cost of transportation and Disposal due to the City requiring the Contractor to use a different disposal or processing facility(ies). As of the Signature Date, City is not directing Disposal, except to the extent specified in Article 4.14. The City-directed use of the Forward Inc. Landfill pursuant to Article 4.14 is not an eligible item for a special rate review.
2. Increased frequency of street sweeping.
3. Addition of two or more Special Events to the list contained in Exhibit G, such that the total number of Special Events per year is seven (7) or more.
4. A change in the cost of providing Collection Services due to an increase in State or local fees or surcharges at the Disposal or processing site or a Change in Law.
5. A Change in Scope as provided in Article 5.7.
6. Changes to Contractor Fee or AB 939 Fee in accordance with Article 3.5.
7. A Change in Law for which Contractor compliance is mandatory, and that results in significant documented increases in the specific cost of providing Collection Services.

### **B. Ineligible Items**

Items for which Contractor will not be additionally compensated over the Term, except as resulting from a Change in Scope, include, but are not limited to:

1. Changes in fuel cost
2. Decreases in Recycling revenues due to change in market conditions or any other factor, from the sale of Recyclables Materials.
3. Increases in the cost of Recyclables processing.
4. Increases in transportation time and/or costs related to provision of Collection Services.
5. Changes in the number of Customers due to changes in population or housing/business development, or to annexation.
6. Shifts in the number of accounts between larger and smaller Cart sizes, large and smaller Bins, or more or less frequency of Bin pickup.
7. Changes in the Collection location, volume and/or frequency of Collection of Solid Waste, Recyclables, Green Waste and Food Waste associated with City Services specified in Article 5 and in Exhibits A and F.
8. Incorrectly estimated number of accounts; tons of Solid Waste, Recyclables or Green Waste and Food Waste; or inaccuracies in any other assumptions or data at any time during the Term.
9. Changes in local, state or federal clean air regulations.
10. Changes in regulatory, technical, logistic or other aspects of the Low Emission Vehicle requirement contained in Article 4.17.

#### **C. Review of Costs**

Should either Party request a special Rate review, the City shall have the right to review any or all costs associated with the Contractor's services under this Agreement. A special Rate review may, at the City's sole discretion occur in conjunction with a performance review pursuant to Article 8.7.

#### **D. Submittal of Request**

Contractor must submit any request for a special review of Rates, and reasonable cost and operational data in a form and manner specified by the City at least six (6) months prior to the proposed effective date of any Rate adjustment, and shall make every effort to have any such increase coincide with a regular Rate adjustment.

#### **E. Burden of Justification**

Contractor shall bear the burden of justifying to City by Substantial Evidence any entitlement to a Rate adjustment under this Article 7.4. If the City determines that the Contractor has not met its burden, the Contractor may request another hearing to produce additional evidence. Upon request, the City may permit said additional hearing.

#### **F. Grant of Request**

Based on evidence the Contractor submits, the Council may grant some, all or none of the requested Rate adjustment.

**G. Calculation of Rate Adjustment**

Any Rate adjustment made pursuant to this Article 7.4 shall be calculated as illustrated in Article 7.2.

**H. Cost of the Review**

The Party initiating or requesting a special Rate review shall compensate the other Party for all reasonable and documented costs associated with conducting the review.

**7.5 RESOLUTION OF DISPUTES REGARDING SPECIAL RATE REVIEWS**

This Article 7.5 pertains only to special Rate reviews requested by Contractor under the provisions of Article 7.4. If City rejects a special Rate adjustment requested by the Contractor, grants a Rate adjustment different than was requested by the Contractor, or fails to act in a timely manner upon all or any part of the Contractor's special Rate adjustment application, then Contractor's sole remedy against the City is to file a petition for writ of mandate pursuant to CCP 6, Section 1085. Contractor expressly does not have a cause for action for damages against the City. In addition, Contractor expressly does not have a cause for action for damages against the City, should the City be unable to implement a planned adjustment in Rates due to applicable legal requirements including but not limited to California State Proposition 218.



**ARTICLE 8**  
**RECORD KEEPING, REPORTING, AND PERFORMANCE REVIEWS**

**8.1 RECORD KEEPING**

**A. Accounting Records**

Contractor shall maintain full, complete and separate financial, statistical and accounting records, pertaining to cash, billing, and provisions of all Collection Services, prepared on an accrual basis in accordance with generally accepted accounting principles. Such records shall be subject to audit, copy, and inspection by the City Representative or designee. Gross Rate Revenues and Recycling revenues derived from provision of the Collection Services, whether such services are performed by the Contractor or by a subcontractor or subcontractors, shall be recorded as revenues in the accounts of the Contractor. Contractor shall maintain and preserve all cash, billing and Disposal records for a period of not less than five (5) years following the close of each of the Contractor's fiscal years.

**B. Collection Materials Records**

Contractor shall maintain records of the quantities of (i) Solid Waste Collected and Disposed under the terms of this Agreement, (ii) Recyclable Materials, by type, Collected, purchased, processed, sold, donated or given for no compensation, and Residue Disposed, (iii) Green Waste and Food Waste Collected, received, purchased, processed, sold, donated or given for no compensation, and Residue Disposed, and (iv) street sweeping materials Collected and Disposed.

**C. Customer Complaint Log**

Contractor shall maintain the Customer complaint log pursuant to Article 5.3B.

**D. Other Records**

Contractor shall maintain all other records reasonably related to provision of Collection Services, whether or not specified in this Article 8 or elsewhere in the Agreement.

**8.2 QUARTERLY AND ANNUAL REPORTING**

**A. General**

Annual reports shall be submitted no later than June 1 for the previous calendar year, beginning June 1, 2005. Annual reports shall be submitted in hard copy, and shall be provided electronically on a 3.5" IBM-compatible diskette in software acceptable to the City.

**B. CIWMB Reports**

Contractor shall prepare annual reports to the California Integrated Waste Management Board (CIWMB), for submittal to the City for review and comment, and Contractor revision as needed. City shall submit final report to the State. Contractor shall submit a draft CIWMB report format to the City by April 1, 2004 that fully meets State requirements. Contractor shall finalize the format in a form approved by the City.

**C. City Reports**

Annual reports to the City shall be due on June 1 of each year, beginning June 1, 2005, and shall include:

1. A summary of the prior year's monthly Gross Rate Revenues, Contractor Fee, AB 939 Fee, Liquidated Damages, any other payments to City, and Monthly Remittances.
2. Account data submitted in hard copy, including the number of accounts, account names and addresses of collection locations per each service category.
3. Public education and information activities undertaken during the year, including distribution of bill inserts, Collection notification tags, community information and events, tours and other activities related to the provision of Collection Services. Discuss the impact of these activities on Recycling and Green Waste and Food Waste program participation and amounts collected for single-family, multi-family and commercial Customers.
4. An analysis of any Recycling and Green Waste and Food Waste Collection, processing and marketing issues or conditions (such as participation, setouts, contamination, etc) and possible solutions, discussed separately for single-family, multi-family and commercial Customers.
5. Street sweeping data related to the provision of services as described in Exhibit H, and in a format to be proposed by the Contractor and approved by the City.
6. Detailed review of the number and type of complaints received over the past year, including how they were resolved and the elapsed time between receipt of the first complaint and final resolution of the complaint. Contractor shall propose, and City shall approve in advance the format to be used for this portion of the annual report.

Quarterly reports to the City shall be due on the 15<sup>th</sup> day of the month following the previous calendar quarter and shall include:

Total tons disposed and tons diverted through provision of the Collection Services (tons diverted through Contractor's non-exclusive Recycling, Construction and Demolition Debris or Debris Box Services and Compactor Services provided to manufacturing facilities, factories, food processors, refineries, and publicly operated treatment works shall not be included in the Collection Services tonnage reports).

#### **D. Additional City Report Information to Be Submitted As Requested**

City may also require that the annual reports include some or all of the following information and data:

1. **Solid Waste Data.** Include separately for Cart, Bin, Debris Box and Compactor Service the average number of daily setouts, and tons Collected and Delivered to the Disposal facility. Indicate number of service accounts by service classification level for single-family, multi-family and commercial Customers. Indicate number of Bins and Carts distributed by size and Customer type.
2. **Recycling Data.** Include gross tons Collected daily on average by material type by route for Cart and Bin Service. Indicate average number of daily setouts by Cart route. Provide total setouts and tonnages, by material type and by route for the quarter. Indicate average participation rates by quarter relative to the total number of Customers in terms of weekly setout counts. Indicate, by material type (and grade where appropriate), quarterly totals of Recyclable Materials processed and sold including

1619 facility name and location, average price received per ton and total Recycling Revenue  
1620 received for the quarter. Indicate any quantities, by material type, donated or otherwise  
1621 disbursed without compensation. Indicate number of Bins and Carts distributed by size  
1622 and Customer type. Also provide quarterly totals and location for Residue Disposed.

1623  
1624 **3. Green Waste and Food Waste Data.** Include average daily gross tons collected by  
1625 route. Indicate average daily number of setouts by route. Indicate average participation  
1626 rates relative to the total number of Customers in terms of weekly setout counts.  
1627 Indicate number of Bins and Carts distributed by size and Customer type. Also provide  
1628 totals and location for Residue Disposed.

1629  
1630 **4. Praises, Complaints, Missed Pickups and Resolutions.** Provide a copy of log of  
1631 praises and complaints and resolutions of complaints, including a summary of the type  
1632 and number of complaints. Provide written record of all calls related to missed pickups  
1633 and responses to such calls.

1634  
1635 **5. Problems and Actions Taken.** Provide summary narrative of problems encountered  
1636 with Collection and processing activities and actions taken. Indicate type and number of  
1637 notification tags left at Customer locations. Indicate instances of property damage or  
1638 injury, poaching or scavenging, significant changes in operation, market factors,  
1639 publicity conducted, and needs for publicity. Include description of processed material  
1640 loads rejected for sale, reason for rejection and disposition of load after rejection.

1641  
1642 **6. Delinquent Accounts.** Name and address of any multi-family or commercial Customer  
1643 for whom service has been suspended or ended due to a failure to pay for service.

1644  
1645 **7. Equipment Inventory.** An updated complete inventory of Collection and major  
1646 processing equipment including stationary, rolling stock, and Bins and Carts by type and  
1647 size.

### 1648 1649 **8.3 ADDITIONAL REPORTING**

1650 The Contractor shall furnish the City with any additional reports as may reasonably be required,  
1651 to be prepared within a reasonable time following the reporting period. City may require  
1652 submittal of any of the information specified in Article 8.2 on a quarterly or semi-annual (every  
1653 six (6) months) basis, and either periodically or on an ongoing basis.

### 1654 1655 **8.4 OTHER RELATED REQUIREMENTS**

#### 1656 1657 **A. Waste Characterization Studies**

1658 The Contractor shall fully and in a timely manner cooperate with and assist the City in the  
1659 performance, if and as needed, of periodic waste characterization studies.

#### 1660 1661 **B. Collection Monitoring**

1662 The Contractor shall monitor its Collection of Solid Waste, Recyclable Materials, and Green  
1663 Waste and Food Waste to identify occurrences of, and to prevent, contamination of Recyclable  
1664 Materials and Green Waste and Food Waste. Contractor shall allow a person designated by the  
1665 City Representative to ride with Contractor's collection vehicles on any route or routes. The City  
1666 Representative will inform Contractor at least one week in advance prior to date of route  
1667 monitoring. The City Representative will comply with all policies and procedures of Contractor  
1668 when riding in such vehicles.

## **8.5 INSPECTION BY THE CITY**

City Representative, or his or her designee(s), shall have the right to observe and review any Contractor's records, operations, and equipment, used in or connected with the provision of Collection Services, and to enter premises during normal business hours for the purposes of such observations and review at any time without prior notification. City Representatives shall make notification to Contractor's Representative upon arrival. The City Representative will comply with all policies and procedures of Contractor when on Contractor's premises.

## **8.6 PERIODIC REVIEW**

City will periodically review the performance of the Contractor based on Customer complaints, timely payment of sums due, statistical reporting, program progress, AB 939 compliance, etc. This review will be conveyed to the City Council, and the Contractor may review the draft report before it is conveyed to the City Council and submit its own statement.

## **8.7 PERFORMANCE REVIEW**

Subject to the appropriate areas of concern listed below, the City may require a "Performance Review" of the Contractor up to five times during the Base Term of the Agreement and one time during any Extensions of the Agreement. The Performance Review shall be conducted as set forth below.

### **A. Scope of Performance Review.** The Performance Review shall:

1. Be performed by a qualified firm under contract to the City. The qualified firm shall be selected by the City with input from the Contractor.
2. City cost of the Performance Review shall be reimbursed by Contractor, provided that such reimbursement shall not exceed \$60,000 per review, or a combined total of \$300,000 during the Base Term. However, if any Performance Review results in a finding of a material breach or default in the Contractor's performance, the Contractor shall in a timely manner reimburse the City for the total cost of the Performance Review.
3. Address all appropriate areas of concern to the City, and shall provide specific recommendations, as appropriate, for improvement in each area, including but not limited to the following:
  - a. Compliance with the terms of this Agreement and Applicable Laws.
  - b. Overall organizational structure and management systems and procedures.
  - c. Efficiency of Collection operations, including an analysis of routes, schedules and the impact of the requirements of this Agreement.
  - d. Timeliness and thoroughness of street sweeping, including coordination with Collection Services.
  - e. Staffing practices, including the deployment of management and supervisory personnel.
  - f. Financial management practices, including the Contractor's billing and collection system and its policies with regard to uncollected Customer accounts.

- g. Personnel management practices, including compensation policies and the resolution of employee grievances.
- h. Employee job and safety training, and management of Hazardous Waste.
- i. Procedures for receiving and resolving Customer complaints and concerns.
- j. Procedures for the acquisition, maintenance, safety check, and replacement of equipment.
- k. Utilization and management of facilities, equipment and personnel.
- l. Comparison with practices of businesses deemed similar to the Contractor.

Contractor shall cooperate fully with the Performance Review, and provide within thirty (30) days of request, all operational, financial and other information deemed reasonable or convenient by City or the firm selected by the City for purposes of conducting the Performance Review. The Contractor's failure to cooperate or provide all requested information shall be considered an event of Default as provided in Article 10.2A.

Notwithstanding the foregoing provisions of this section, the City and Contractor agree to use good faith efforts to ensure that any Performance Review is conducted in as cost-effective a manner as possible, so as to minimize unnecessary costs or administrative oversight. To this end, the City and the Contractor shall confer prior to any Performance Review to establish the scope and budget of the review, in a manner designed to meet the City's concerns and needs.

#### **B. Determination of Breach**

If, as a result of a Performance Review the City identifies one or more areas of Contractor breach of the Agreement, the provisions of Article 10.1 shall apply.

#### **C. Changes to Operations**

As the result of a Performance Review, the City reserves the right to require reasonable changes to the Contractor's operations, which the City determines to be necessary or appropriate to carrying out the intent of the terms and conditions of this Agreement.

#### **D. Determination of Default**

If, after the City has reviewed the results of a particular Performance Review including problem areas, frequency of occurrence, recommended improvements and compliance therewith, and has considered any evidence presented by the Contractor in connection therewith, the City determines to its satisfaction that any significant event of Default has occurred, then this Agreement may be terminated by the City at its option pursuant to Article 10.7 of this Agreement and without prejudice to any other remedy to which it may be entitled to either at law, in equity, or under this Agreement by giving written notice of termination, either by mail or personal service, to the Contractor not less than thirty (30) days prior to the date upon which the termination is to become effective.



**ARTICLE 9**  
**INDEMNITY, INSURANCE, BOND**

**9.1 INDEMNIFICATION OF THE CITY**

The Contractor agrees to and shall indemnify, defend with counsel acceptable to the City, and hold harmless the City, its officers, officials, employees, volunteers, agents and assigns (indemnitees) from and against any and all damages (whether special, general or punitive), loss, liability, fines, penalties, forfeitures, claims, demands, actions, proceedings or suits (whether administrative or judicial), in law or in equity, of every kind and description, (including, but not limited to, injury to and death of any person and damage to property, strict liability, product liability, or for contribution or indemnity claimed by third parties) arising or resulting from or in any way connected with: (i) the operation of the Contractor, its agents, employees, contractors, and/or subcontractors, in performing or failing to perform this Agreement; (ii) the failure of the Contractor, its agents, employees, contractors and/or subcontractors to comply in all respects with applicable laws, ordinances and regulations, and/or applicable permits and licenses; (iii) the acts of Contractor, its officers, employees, agents, contractors and/or subcontractors in performing services under this Agreement for which strict liability is imposed by law; and (iv) the processing, marketing, and end use of Recyclable Materials and Green Waste and Food Waste. The foregoing indemnity shall apply regardless of whether such loss, liability, penalty, forfeiture, claim, demand, action, proceeding, suit, injury, death or damage is also caused in part by any of the indemnitees' negligence.

The Contractor will not, however, be required to reimburse or indemnify the City to the extent any damages, losses, liabilities, fines, penalties, forfeitures, claims, demands, actions, proceeding or suits, as more fully set forth above, are due to intentional wrongful acts or the active negligence of the City. In instances where Contractor and City are both named defendants, Contractor shall provide a defense for the City, unless after meeting and conferring on the issue, it appears that sufficient conflicts between the Contractor and the City exists so as to reasonably prevent a joint defense of the Contractor and City by counsel for the Contractor. If a final decision, judgment, or settlement allocates liability to the Contractor and to the City, or to one or more other City contractors, Contractor shall have no obligation to the City for indemnification or otherwise with respect to any liability allocated to the City for intentional wrongful acts or active negligence. The Contractors responsibility for indemnification of one or more other City contractors, if any, shall be based on legal principles regarding allocation of fault, contribution and equitable indemnity."

**9.2 AB 939 INDEMNIFICATION OF THE CITY**

Contractor shall defend, indemnify and hold harmless the City with respect to the City's failure to meet its AB 939 diversion goals as a result of Contractor's failure to meet the applicable Diversion goals for the materials required to be collected by Contractor pursuant to this Agreement. Such indemnity shall be limited to exclude all damages or claims to the extent that they are caused by, (i) any actively negligent acts or omissions, or willful misconduct of the City, or its employees, agents, appointed and elected officials; (ii) the City's failure to establish and maintain a source reduction and recycling element pursuant to Sections 41000, et seq. of the Public Resources Code; or (iii) the failure of the City or its employees, agents, appointed and elected officials to comply with or enforce applicable solid waste and/or recycling statutes, ordinances, regulations, or other requirements other than failure attributable to Contractor's performance under this Agreement. The extent of the Contractor's liability under this Section shall not exceed the Contractor's proportionate share of the fault.

### 9.3 HAZARDOUS SUBSTANCES INDEMNIFICATION

Contractor shall indemnify, defend with counsel acceptable to the City, protect and hold harmless the City, its officers, officials, employees, agents, assigns and any successor or successors to the City's interest from and against any and all claims, damages (including but not limited to special, consequential, natural resources and punitive damages) injuries, response mediation and removal costs, losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties attorneys fees for the adverse party and expenses (including but not limited to attorneys and expert witness fees and costs incurred in connection with defending against any of the foregoing or in enforcing this indemnity) of any kind whatsoever paid, incurred or suffered by, or asserted against, the City or its officers, officials, employees, agents, assigns, or contractors arising from or attributable to acts or omissions including but not limited to any repair, cleanup, disposal or detoxification, or preparation and implementation of any removal, remedial, response, closure or other plan (regardless of whether undertaken due to governmental action) concerning any hazardous substance or hazardous wastes at any place where the Contractor transports, stores or disposes of Collection Materials pursuant to this Agreement. This obligation to indemnify is limited to responsibility, liability and damages, as more fully set forth above, attributed to Collection Materials or other commodities transported, stored, or disposed of pursuant to the exclusive services for Collection under this Agreement.

If a final decision or judgment or settlement allocates liability for matters within the scope of Section 9.3 to Contractor and one or more other City contractors, then Contractor shall have no obligation to the City for indemnification with respect to any liability allocated: (i) to such other contractor or contractors; (ii) to the City for activities undertaken by such other contractor or contractors; or (iii) to City for liability resulting from activities of Contractor not related to Collection under this Agreement.

### 9.4 PROPOSITION 218 INDEMNIFICATION

City intends to comply with all applicable laws concerning the approving of Rates under this Agreement. Nonetheless, Contractor shall indemnify, defend with counsel acceptable to the City, and hold harmless the City, its officers, employees, agents and volunteers, (collectively, indemnitees) from and against all claims, damages, injuries, costs, including demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest fines, charges, penalties and expenses (including attorneys' and expert witness fees, expenditures for investigation and administration) and costs of any kind whatsoever paid, imposed upon, endured or suffered by or assessed against any of the indemnitees resulting in any form from the City's approval of Rates for service under this Agreement or in connection with the application of California Constitution, Article XIIC and Article XIID to the imposition, payment or collection of Rates and fees for services provided by Contractor under this Agreement.

### 9.5 INSURANCE SCOPE AND LIMITS

The Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his or her agents, representatives, employees or subcontractors. With respect to General Liability, Errors & Omissions and Pollution and/or Environmental Impairment Liability coverage should be maintained for a minimum of five (5) years after contract completion. The maintenance of claims made against any insurance required of the Contractor shall not be considered a waiver by the City of any claim or liabilities it may have against the Contractor.



1863 **A. Minimum Scope of Insurance**

1864 Coverage shall be at least as broad as:

- 1865
- 1866 1. Insurance Services Office form number GO 0002 (Ed. 1/73) covering comprehensive  
1867 General Liability and Insurance Services Office form number GO 0404 covering Broad  
1868 Form Comprehensive General Liability; or Insurance Services Office Commercial  
1869 General Liability coverage ("occurrence" form CG 0001.).
  - 1870
  - 1871 2. Insurance Services Office form number CA 0001 (Ed. 1/78), covering Automobile  
1872 Liability, code 1 (any auto) and endorsement CA 0025.
  - 1873
  - 1874 3. Worker's Compensation Insurance as required by the State of California and Employer's  
1875 Liability Insurance.
  - 1876
  - 1877 4. Pollution and/or Environmental Impairment Liability and/or Errors & Omissions.
  - 1878

1879 **B. Minimum Limits of Insurance**

1880 The Contractor shall maintain limits no less than:

- 1881
- 1882 1. General Liability: \$5,000,000 combined single limit per occurrence for bodily injury,  
1883 personal injury and property damage including operations, products and completed  
1884 operations as applicable. If Commercial General Liability Insurance or other form with a  
1885 general aggregate limit is used, either the general aggregate limit shall apply separately  
1886 to this project/location or the general aggregate limit shall be twice the required  
1887 occurrence limit.
  - 1888
  - 1889 2. Automobile Liability: \$3,000,000 combined single limit per accident for bodily injury and  
1890 property damage.
  - 1891
  - 1892 3. Workers' Compensation and Employer's Liability: \$1,000,000 each accident, \$1,000,000  
1893 policy limit bodily injury or disease, \$1,000,000 each employee bodily injury by disease.
  - 1894
  - 1895 4. Pollution and/or Environmental Impairment Liability and/or Errors and Omissions:  
1896 \$3,000,000 each occurrence/\$10,000,000 policy aggregate covering liability arising from  
1897 the release of waste materials and/or irritants, contaminants or pollutants. Such  
1898 coverage shall, if commercially available, without involvement of the City, automatically  
1899 broaden in its form of coverage to include legislated changes in the definition of waste  
1900 materials and/or irritants, contaminants or pollutants. The policy shall stipulate this  
1901 insurance is primary and no other insurance carried by the City will be called upon to  
1902 contribute to a loss suffered by the Contractor hereunder and waive subrogation against  
1903 the City and other additional insureds.
  - 1904

1905 **C. Deductible and Self-Insured Retentions**

1906 Any deductibles or self-insured retentions must be declared to and approved in writing by the  
1907 City. At the option of the City, either the insurer shall reduce or eliminate such deductibles or  
1908 self insured retentions as respects the City, its officers, officials, employees and volunteers; or  
1909 the Contractor shall provide evidence satisfactory to the City guaranteeing payment of losses  
1910 and related investigations, claim administration and defense expenses. Notwithstanding the  
1911 foregoing, the City may elect not to accept any deductibles or self-insured retentions offered by  
1912 the Contractor.

1913 **D. Other Insurance Provisions**

- 1914
- 1915 1. The policies are to contain, or be endorsed to contain, the following provisions:
- 1916
- 1917 a. The City, its officers, officials, employees and volunteers are to be covered as
- 1918 additional insureds with respect to liability arising out of automobiles owned,
- 1919 leased, hired or borrowed by or on behalf of the Contractor; and with respect to
- 1920 liability arising out of work or operations performed by or on behalf of the
- 1921 Contractor including materials, parts or equipment furnished in connection with
- 1922 such work or operations; Pollution and/or Asbestos Pollution.
- 1923
- 1924 b. The Contractor's insurance coverage shall be primary insurance as respects the
- 1925 City, its officers, officials, employees, agents and volunteers. Any insurance or
- 1926 self-insurance maintained by the City, its officers, officials, employees, agents or
- 1927 volunteers shall be excess of the Contractor's insurance and shall not contribute
- 1928 with it.
- 1929
- 1930 c. Each insurance policy required by this clause shall be occurrence-based (other
- 1931 than for pollution legal liability, which may be claims-made), or an alternate form
- 1932 as approved by the City and shall be endorsed to state that coverage shall not
- 1933 be canceled by the insurer except after thirty (30) days prior written notice has
- 1934 been given to the City.
- 1935
- 1936 d. The Contractor's insurance shall apply separately to each insured against whom
- 1937 claim is made or suit is brought, except with respect to the limits of the insurer's
- 1938 liability.
- 1939
- 1940 e. Coverage shall not extend to any indemnity coverage for the active negligence of
- 1941 the additional insured in any case where an agreement to indemnify the
- 1942 additional insured would be invalid under Subsection (b) of Section 2782 of the
- 1943 Civil Code.
- 1944
- 1945 2. The Automobile Liability policy shall be endorsed to delete paragraph A of the Pollution
- 1946 exclusion and add the Motor Carrier Act endorsement (MCS-90) and/or other
- 1947 endorsements required by federal or state authorities.
- 1948
- 1949 3. Worker's Compensation and Employers Liability Coverage. The insurer shall agree to
- 1950 waive all rights of subrogation against the City, its officers, officials, employees and
- 1951 volunteers for losses arising from work performed by the Contractor for the City.
- 1952
- 1953 4. All Coverages. Each insurance policy required by this clause shall be occurrence-based
- 1954 (other than for pollution legal liability, which may be claims-made) or an alternate form
- 1955 as approved by the City and endorsed to state that coverage shall not be suspended,
- 1956 voided, canceled by either party, reduced in coverage or in limits except after thirty (30)
- 1957 days' prior written notice by certified mail, return receipt requested, has been given to
- 1958 the City.
- 1959

1960 **E. Acceptability of Insurers**

1961 Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII if

1962 admitted. If Pollution and/or Environmental Impairment and/or Errors and Omissions coverages

are not available from an admitted insurer, the coverage may be written with the City's permission, by a non-admitted insurance company. A non-admitted company should have an A.M. Best's rating of A:X or higher.

#### **F. Verification of Coverage**

As provided in Article 3.15 D and Exhibit L, the Contractor shall furnish the City with original certificates evidencing coverage required by this clause.

#### **G. Subcontractors**

The Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificate and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

#### **H. Other Provisions**

1. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City, its officers, officials, agents, employees and volunteers.
2. The City, its officers, officials, agents, employees and volunteers shall be named as additional insureds on all policies.

### **9.6 INSTRUMENT FOR SECURING PERFORMANCE**

No later than the Effective Date, the Contractor shall file with the City an instrument for securing performance payable to the City, in a form acceptable to the City, securing the Contractor's faithful performance of each and every one of its obligations under this Agreement. The instrument shall become Exhibit K to this Agreement. The principal sum of the instrument shall be \$2 million. The instrument may be in the form of a certificate of deposit, letter of credit or performance bond. The instrument shall as required be executed as surety by a corporation authorized to issue such instrument in the State of California, with a financial condition and record of service satisfactory to the City. The instrument shall be in a form specified by the City Representative. The instrument shall remain in force for the duration of this Agreement. The premium for a letter of credit or any other charge related to maintenance of any of the instruments shall be paid by the Contractor.

1997

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**ARTICLE 10**  
**BREACH, DEFAULT, AND TERMINATION**

**10.1 EVENTS OF BREACH**

**A. Definition**

The Parties acknowledge that provision of consistent, reliable Collection Services is of utmost importance to the City and that the City has considered and relied on the Contractor's representations as to its ability and commitment to quality of service in awarding this Agreement. In the event that the Contractor fails to perform fully any of its obligations under this Agreement (other than "Events of Default" stipulated in Section 10.2), the Contractor shall be in breach of this Agreement.

**B. Cure of Breach**

The Contractor shall begin cure of any breach as soon as it becomes aware of the breach, whether discovered by the Contractor or through notice from the City. Upon giving or receiving written notice of a breach, the Contractor shall proceed to cure such breach as follows:

1. Immediately, if the breach is such that in the sole determination of the City, the health, welfare or safety of the public is endangered thereby; or
2. Within thirty (30) days of giving or receiving notice of the breach; provided that if the nature of the breach is such that it will reasonably require more than thirty (30) days to cure, the Contractor shall not be in default so long as the Contractor promptly commences to cure such breach, provides the City weekly written status of progress in curing such breach, and diligently proceeds to complete same. The thirty (30) day cure period may only be extended upon the Contractor's receipt of written agreement from the City.

**C. Liquidated Damages**

The Parties further recognize that some quantified standards of performance are necessary and appropriate to ensure consistent and reliable service and performance, and to serve as a specific measure of successful performance under the Agreement. The Parties further recognize that if the Contractor fails to perform its obligations, the City and residents of the City will suffer damages that are and will be impractical and extremely difficult to ascertain and determine. The Parties agree that the Liquidated Damage amounts provided in Exhibit J represent a reasonable estimate of the amount of such damages for the specified breaches, without prejudice to the City's right to treat uncorrected non-performance as an Event of Default under this Article 10. Liquidated Damages are paid as damages, and not as a penalty. The City may determine the occurrence of events giving rise to Liquidated Damages through the observation of its own employees or representatives, or by investigation of Customer or resident complaints.

**D. Notice**

Prior to assessing Liquidated Damages, and in addition to any other available remedies the City may impose, the City shall give the Contractor written notice of its intention to do so. The notice shall include a brief description of the incident or nonperformance. The Contractor may review (and copy at its own expense) all information in the possession of the City relating to the assessment of Liquidated Damages. The Contractor may, within ten (10) Working Days after receiving the notice request a meeting with the City Representative. The Contractor may

present evidence in writing and through testimony of its employees and others relevant to the incident or nonperformance. The City Representative shall provide the Contractor with a brief written explanation of his or her determination on each breach prior to authorizing the assessment of liquidated damages. The decision of the City Representative shall be final. The assessment of Liquidated Damages issued by the City shall appear on the next monthly statement and the Contractor shall, at its own expense, remit to the City damages specified in said assessment as part of the Monthly Remittance.

## **10.2 EVENTS OF DEFAULT**

### **A. Definition**

Each of the following shall constitute an Event of Default ("Event of Default") hereunder:

1. **Material Breach.** Failure to perform any obligation under this Agreement which (i) constitutes a significant hazard to the public health safety or welfare or (ii) would impose civil or criminal liability on the City.
2. **Non-Material Breach.** A non-material breach of this Agreement shall not constitute an Event of Default if (i) such breach is cured as specified in Article 10.1 B upon notice to the Contractor, and (ii) such breach is accidental, inadvertent, and occasional and not a pattern and practice of the Contractor.
3. **Repeated Pattern of Breaches.** There is a pattern of breaches over time such that in combination, they constitute a significant failure by the Contractor to perform its obligations.
4. **Misrepresentation or False Warranty.** Any representation, disclosure, assurance, or warranty made to the City by the Contractor in connection with, or as an inducement to entering into or performing this Agreement or any future amendment to this Agreement, or that is a condition to the effectiveness of the Agreement, that proves to be false or misleading in any material respect as of the time the representation, disclosure, assurance, or warranty is made.
5. **Result of Performance Review.** Failure to provide information for performance review, or as a result of a poor performance review, as provided in Article 8.7.
6. **Seizure or Attachment of Equipment.** There is a seizure or attachment (other than a prejudgment attachment) of, or levy affecting possession on, the operating equipment of Contractor, including without limit its vehicles, maintenance or office facilities, or any part thereof of such proportion as to impair the Contractor's ability to perform under this Agreement and which cannot be released, bonded, or otherwise lifted within forty-eight (48) hours excluding weekends and holidays.
7. **Contractor Debt.** Contractor files a voluntary petition for debt relief under any applicable bankruptcy, insolvency, debtor relief, or other similar law now or hereafter in effect, or consents to the appointment of, or taking of possession by, a receiver, liquidator, assignee (other than as a part of a transfer of equipment no longer useful to the Contractor or necessary for this Agreement), trustee (other than as security for an obligation under a deed of trust), custodian, sequestrator (or similar official) of Contractor for a part of the Contractor's operating assets or any substantial part of the

Contractor's property, or shall make any general assignment for the benefit of the Contractor's creditors, or shall become insolvent and unable to pay its debts generally as they become due.

8. **Court Order or Decree.** Any court having jurisdiction shall enter a decree or order for relief in respect of the Contractor, in any involuntary case brought under any bankruptcy, insolvency, debtor relief, or similar law now or hereafter in effect, or the Contractor shall consent to or shall fail to oppose any such proceeding, or any such court shall enter a decree or order appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of the Contractor or for any part of the Contractor's operating equipment or assets, or order the winding up or liquidation of the affairs of the Contractor.
9. **Failure to Provide Performance Assurances.** The Contractor fails to provide reasonable assurances of performance as required under Article 10.11.
10. **Failure to Notify City.** The Contractor fails to notify City in a timely manner of any receipt of notice of violation or official communication from those regulatory agencies regulating Solid Waste, Recyclables, Green Waste and Food Waste Collection, transportation, processing or Disposal activities that might materially affect the Contractor's ability to perform all of the Collection Services.
11. **Lapse of Financial Requirement.** Lapse of any insurance, letter of credit, bond or other financial instrument required under this Agreement.
12. **Regulatory Violation.** The Contractor violates in any material respect any orders or filings of any regulatory body having jurisdiction over the Contractor relative to this Agreement, provided the Contractor may contest any such orders or filings by appropriate proceedings conducted in good faith, in which case no breach of this Agreement shall be deemed to have occurred until the later of a final order or judgment has been issued.
13. **Cessation of Services.** The Contractor ceases to provide Collection Services as required under this Agreement for a period of two (2) consecutive days or more, for any reason within the control of the Contractor.
14. **Failure to Meet Payment or Reporting Requirements.** The Contractor fails to make any payment of any sum owed to the City required under this Agreement and/or refuses to provide the City with required information, reports, and/or records in a timely manner as provided for in this Agreement.
15. **Unremedied Acts or Omissions.** Any act or omission relative to this Agreement by the Contractor which violates in any material respect the terms, conditions, or requirements of this Agreement, the California Integrated Waste Management Act of 1989, as it may be amended from time to time, or any law, statute, ordinance, order, directive, rule, or regulation issued thereunder and which is not corrected or remedied within the time set in the written notice of the violation or, if the Contractor cannot reasonably correct or remedy the breach within the time set forth in such notice, if the Contractor should fail to commence to correct or remedy such violation within the time set forth in such notice and diligently effect such correction or remedy thereafter.

2148 **16. Criminal Activity of Contractor.** Should the Contractor or any of its officers, directors  
2149 or contract manager, or others in position to supervise or influence actions under this  
2150 Agreement, be "found guilty" of felonious conduct relating to its obligations, or other  
2151 felonious conduct at any of the Contractor's operations. The term "found guilty" shall be  
2152 deemed to include any judicial determination that the Contractor or any of the  
2153 Contractor's officers, directors or employees is guilty, and any admission of guilt by the  
2154 Contractor, or any of the Contractor's officers, directors or employees including, but not  
2155 limited to, the pleas of "guilty," "nolo contendere," "no contest," or "guilty to a lesser  
2156 felony" entered as part of any plea bargain. Such felonious conduct includes, but is not  
2157 limited to any activities related to or carried out pursuant to this Agreement for: (i) price  
2158 fixing, (ii) illegal transport or disposal of hazardous or toxic materials, (iii) bribery of  
2159 public officials, or (iv) fraud or tampering. In the event of felonious conduct the City  
2160 reserves the right to exercise one or more of the remedies specified below in Article  
2161 10.5. Such action shall be taken after the Contractor has been given notice and an  
2162 opportunity to present evidence in mitigation. If the City does not terminate this  
2163 Agreement, the Contractor shall dismiss or remove officers, directors or employees  
2164 found guilty of felonious behavior and take all action necessary and appropriate remedy  
2165 any breach of its obligations.

2166  
2167 **17. Assignment.** The Contractor assigns this Agreement in violation of Article 11.5.  
2168

#### 2169 **B. Notice of Default**

2170 The Contractor shall be in default from the date of receipt of a notice from the City identifying  
2171 such default. The notice shall include a brief description of the default. The Contractor may  
2172 review (and copy at its own expense) all information in the possession of the City relating to the  
2173 Event(s) of Default. The Contractor may, within three (3) Working Days after receiving the  
2174 notice, request a meeting with the City Representative. The Contractor may present evidence in  
2175 writing and through testimony of its employees and others relevant to the Event(s) of Default.  
2176 The decision of the City Representative regarding determination of an Event(s) of Default shall  
2177 be final.  
2178

#### 2179 **C. Cure of Default**

2180 The Contractor shall begin cure of any Event of Default as soon as it becomes aware of the  
2181 Event of Default, whether discovered by the Contractor or through notice from the City. Upon  
2182 giving or receiving verbal notice of default, the Contractor shall proceed to cure such breach as  
2183 follows:  
2184

- 2185 1. Immediately, if the default is such that in the sole determination of the City, the health,  
2186 welfare or safety of the public is endangered thereby; or  
2187
- 2188 2. Within ten (10) Working Days of giving or receiving notice of default; provided that if the  
2189 nature of the default is such that it will reasonably require more than ten (10) days to  
2190 cure, the Contractor shall have such additional time as is reasonably needed to  
2191 expeditiously complete a cure, and only upon written agreement from the City. During  
2192 any default cure period, the Contractor shall provide the City weekly written status of  
2193 progress in curing such default.



2194 **10.3 CITY DETERMINATION OF CURE OF BREACH OR DEFAULT**

2195 An event of breach or default shall be considered remedied and/or cured upon signature by  
2196 both Parties of a written agreement specifying the event and stating that remedy and/or cure of  
2197 such event has been completed.

2198  
2199 **10.4 CITY'S RIGHT TO PERFORM**

2200  
2201 **A. General**

2202 In addition to any and all other legal or equitable remedies, in the event that the Contractor, for  
2203 any reason whatsoever, fails, refuses or is unable to provide any Collection Service for a period  
2204 of more than seventy-two (72) hours, and if, as a result thereof, should Solid Waste accumulate  
2205 in the City to such an extent, in such a manner, or for such a time that the City should find that  
2206 such accumulation endangers or menaces the public health, safety or welfare, then the City  
2207 shall have the right, but not the obligation, without payment to the Contractor upon twenty-four  
2208 (24) hours prior notice to the Contractor during the period of such emergency as determined by  
2209 the City: (i) to perform, or cause to be performed, such services itself with its own or other  
2210 personnel without liability to the Contractor; and/or (ii) to take possession of any or all of the  
2211 Contractor's land, equipment and other property used or useful in providing Collection Services  
2212 and to use such property to provide any Collection Services.

2213  
2214 Notice of the Contractor's failure, refusal or neglect to provide Collection Services may be given  
2215 orally by telephone to the Contractor and shall be effective immediately. Written confirmation of  
2216 such oral notification shall be sent to the Contractor within twenty-four (24) hours of the oral  
2217 notification.

2218  
2219 The Contractor further agrees that in such event:

- 2220
- 2221 1. It will fully cooperate with the City to effect the transfer of possession of property to the  
2222 City for the City's use.
  - 2223
  - 2224 2. It will, if the City so requests, and to the extent feasible, keep in good repair and  
2225 condition all of such property, provide all motor vehicles with fuel, oil and other service,  
2226 and provide such other service, and provide such other service as may be necessary to  
2227 maintain said property in operational condition.
  - 2228
  - 2229 3. The Contractor shall provide all necessary billing information to the City. The City shall  
2230 determine how to bill, in what amounts, and the distribution of amounts received. The  
2231 City shall provide the Contractor reasonable compensation for provision of the  
2232 Contractor's land, equipment, or other property if the City's exercise of the right to  
2233 perform is the result of an Uncontrollable Circumstance.
  - 2234

2235 The City's exercise of its rights under this Article 10: (i) does not constitute a taking of private  
2236 property for which compensation must be paid; (ii) will not create any contract, tort, or common  
2237 count liability on the part of the City to the Contractor; and (iii) does not exempt the Contractor  
2238 from the indemnity provisions of Article 9.1, which are meant to extend to circumstances arising  
2239 under this Section, provided that the Contractor is not required to indemnify the City against  
2240 claims and damages arising from the active negligence or willful misconduct of City officers,  
2241 employees, agents, or volunteers acting under this section. The City shall make good faith  
2242 efforts to coordinate use of Contractor's land, equipment and other property with the Contractor  
2243 in order to minimize interference with or disruption of other business activities of the Contractor.

2244 **B. Duration of City's Possession**

2245 The City has no obligation to maintain possession of the Contractor's property and/or continue  
2246 its use in providing any Collection Services for any period of time and may, at any time, in its  
2247 sole discretion, relinquish possession to the Contractor. The City's right to retain temporary  
2248 possession of the Contractor's property, and to provide one or more Collection Services, shall  
2249 continue until the Contractor can demonstrate to the City's satisfaction that it is ready, willing,  
2250 and able to resume such services.

2251  
2252 **10.5 CITY REMEDIES FOR CONTRACTOR DEFAULT**

2253 Upon failure to cure a default pursuant to Article 10.2C, the City shall have the following rights:

- 2254
- 2255 1. **Waive Default.** To, at its sole discretion, waive the Contractor default.
  - 2256
  - 2257 2. **Termination.** Terminate the Agreement in accordance with Article 10.7.
  - 2258
  - 2259 3. **All Other Available Remedies.** In addition to, or in lieu of termination, to exercise all of  
2260 its remedies in accordance with this Article 10 and any other remedies at law and in  
2261 equity, to which the City shall be entitled, according to proof.
  - 2262
  - 2263 4. **Damages Survive.** If the Contractor owes any damages upon the City's termination of  
2264 the Agreement, the Contractor's liability under this Article 10.5 shall survive termination.
  - 2265

2266 Whether or not the City exercises its right to terminate, the City shall have the right to: (i) seek  
2267 performance by the surety under the letter of credit, performance bond or certificate of deposit  
2268 (instrument for securing performance), and (ii) make a claim on any insurance policy or policies.

2269  
2270 **10.6 CITY WAIVER OF BREACH OR DEFAULT**

2271 A waiver by the City of any breach or default by the Contractor shall not be deemed to be  
2272 waiver of any other breach or default by the Contractor, including ones with respect to the same  
2273 obligations hereunder, and including new incidents of the same breach or default. The  
2274 subsequent acceptance by the City of any damages or other money paid by the Contractor  
2275 hereunder shall not be deemed to be a waiver by the City of any preexisting or concurrent  
2276 breach or default by the Contractor.

2277  
2278 **10.7 TERMINATION**

2279  
2280 **A. Termination for Cause**

2281 The City shall have the right to terminate this Agreement without need for any hearing, suit, or  
2282 legal action in the circumstances specified below. The Contractor's liability to provide such  
2283 records shall survive the termination of this Agreement. The Contractor shall forfeit its  
2284 instrument for securing performance to the City to the extent required to compensate the City  
2285 for damages incurred as a result of the breach or default. Termination may occur upon:

- 2286
- 2287 1. **Uncured Default.** An uncured Event of Default by the Contractor.
  - 2288
  - 2289 2. **Poor Performance Review.** As the result of a poor performance review as provided in  
2290 Article 8.7.
  - 2291
  - 2292 3. **Excessive Liquidated Damages.** Upon assessment of cumulative Liquidated Damages  
2293 totaling more than \$15,000 in any twelve (12) month period, or \$25,000 in any twenty-

four (24) month period. The Contractor acknowledges that if cumulative Liquidated Damages exceed either of these thresholds that it waives all rights to contest a termination based on this Article 10.7A.3. Liquidated Damages assessed for failure to achieve the Diversion percentages specified in Exhibit J will not be included in calculating "Excessive Liquidated Damages".

4. **Failure to Convert to Low Emission Vehicles.** Failure to convert entire fleet (except light trucks and automobiles) to Low Emission Vehicles by June 1, 2009 as provided in Article 4.17, or to convert by such alternative dates(s) agreed to by the City pursuant to Article 4.17.

#### **B. Notice of Termination**

In addition to any other available remedies the City may impose as specified in Article 10.5 and as a result of the Contractor default, the City may give the Contractor written notice of termination, effective within five (5) days. The decision of the City Representative with regards to termination may be appealed to the City Council. Upon notice of termination, the Contractor shall promptly provide the City with any or all records kept in accordance with Article 8 or any other record keeping provisions of this Agreement or its Exhibits.

#### **10.8 POSSESSION OF PROPERTY UPON TERMINATION**

In the event of termination for default, the City shall have the right to take possession of any and all of the Contractor's land, equipment, and other property used or useful in the Collection and transportation of Solid Waste, Recyclables, or Green Waste and Food Waste in the provision of services under this Agreement, and the billing and collection of fees for these services and to use such property. The City shall pay reasonable compensation to the Contractor for the temporary use of such land, equipment, and other property except that the City shall not be required to compensate the Contractor for the value of business goodwill. The City shall have the right to retain the possession of such property for up to four (4) months until other suitable arrangements can be made for the provision of Solid Waste, Recyclables, or Green Waste and Food Waste Collection Services which may include the award of an agreement to another contractor(s), the Contractor shall furnish the City with immediate access to all of its business records related to its route maps, schedules, and billing of accounts for services. The City shall make good faith efforts to coordinate use of the Contractor's land, equipment and other property with the Contractor in order to minimize interference with or disruption of other business activities of the Contractor.

#### **10.9 CITY'S REMEDIES CUMULATIVE: SPECIFIC PERFORMANCE**

The City's right to terminate this Agreement under Article 10.7 and to take possession of the Contractor's properties under Article 10.8 are not exclusive, and the City's termination of this Agreement shall not constitute an election of remedies. Instead, all remedies provided for in this Agreement shall be in addition to any and all other legal and equitable rights and remedies which the City may have under law or as otherwise provided in this Agreement. By virtue of the nature of this Agreement, the urgency of timely, continuous and high-quality service, the lead time required to effect alternative service, and the rights granted by the City to the Contractor, the remedy of damages for a default hereof by the Contractor is inadequate, and the City may be entitled to injunctive relief.

## **10.10 EXCUSE FROM PERFORMANCE**

### **A. Excuse from Performance**

The Parties shall be excused from performing their respective obligations hereunder in the event they are prevented from so performing by reason of floods, moderate to severe earthquakes, tsunamis, other "acts of God," war, civil insurrection, riots, and other similar catastrophic events which are beyond the control of and not the fault of the Party claiming excuse from performance hereunder. Labor unrest, including but not limited to strike, work stoppage or slowdown, sickout, picketing, or other concerted job action conducted by the Contractor's employees or directed at the Contractor, or a subcontractor, is not an excuse from performance, and the Contractor shall be obligated to continue to provide service notwithstanding the occurrence of any or all of such events. In the case of labor unrest or job action directed at a third party over whom the Contractor has no control, the inability of the Contractor to make Collections due to the unwillingness or failure of the third party to provide reasonable assurance of the safety of the Contractor's employees while making Collections or to make reasonable accommodations with respect to container placement and point of delivery, time of Collection, or other operating circumstances to minimize any confrontation with pickets or the number of persons necessary to make Collections, shall, to that limited extent, excuse performance. The foregoing excuse shall be conditioned on the Contractor's cooperation in making Collection at different times and in different locations.

### **B. Inexcuse from Performance**

In addition, none of the following are to be considered an excuse from performance: (i) general economic conditions, interest or inflation rates, or currency fluctuation or changes in the cost or availability of fuel, commodities, supplies or equipment; (ii) changes in transport or Disposal costs, Disposal facility locations, and/or other related circumstances; (iii) changes in the financial condition of the Contractor or any of its subcontractors affecting their ability to perform their obligations; (iv) the consequences of errors, neglect or omissions by the Contractor, or any subcontractor; (v) any failure of any subcontractor or supplier to furnish labor, materials, service or equipment for any reason; (vi) equipment failure; or (vii) changes in market prices for, or the unavailability of markets for, the sale or purchase of Recyclable Materials.

### **C. Notice**

The Party claiming excuse from performance shall, within two (2) days after such party has notice of such cause, give the other Party notice of the facts constituting such cause and asserting its claim to excuse under this Article. Notwithstanding, the Contractor, in the event of a declared disaster, shall comply with the emergency plans of the City and the County.

### **D. Interruption or Discontinuance of Service**

The partial or complete interruption or discontinuance of the Contractor's services caused by one or more of the events described in this Article and constituting an excuse from performance shall not constitute an Event of Default by the Contractor under this Agreement.

Notwithstanding the foregoing, however, (i) the existence of an excuse from performance shall not affect the City's right to perform services under Article 10.4 and (ii) if the Contractor is excused from performing its obligations hereunder for any of the causes listed in this Article 10 for a period of thirty (30) days or more, other than as the results of third-party labor disputes under which Collection Services cannot be provided for reasons described earlier in this Article, the City shall nevertheless have the right, in its sole discretion, to terminate this Agreement by giving ten (10) days notice, in which case the provisions of Article 10.5 shall apply.

**10.11 RIGHT TO DEMAND ASSURANCES OF PERFORMANCE**

If the Contractor is: (i) the subject of any labor unrest including work stoppage or slowdown, sickout, picketing or other concerted job action; (ii) appears in the reasonable judgment of the City to be unable to regularly pay its bills as they become due; or (iii) is the subject of a civil or criminal investigation, charge, or judgment or order entered by a federal, state, regional or local agency for violation of a law relating to performance under this Agreement, and the City believes in good faith that the Contractor's ability to perform under the Agreement has thereby been placed in substantial jeopardy, the City may, at its option and in addition to all other remedies it may have, demand from the Contractor reasonable assurances of timely and proper performance of this Agreement, in such form and substance as the City believes in good faith is reasonably necessary in the circumstances to evidence continued ability to perform under this Agreement. If the Contractor fails or refuses to provide satisfactory assurances of timely and proper performance in the form and by the date required by the City, such failure or refusal shall be an Event of Default for purposes of Article 10.2.

**10.12 PAYMENT HELD IN ABEYANCE**

During an uncured breach or default, the City may withhold any payment or adjustment otherwise due pursuant to Articles 6 or 7 to the extent such withholding is reasonably related to damages sustained by the City as a result of such breach or default. This withholding of money shall be in addition to any other right or remedy provided the City under this Agreement.



2410 **ARTICLE 11**  
2411 **OTHER AGREEMENTS OF THE PARTIES**  
2412

2413 **11.1 RELATIONSHIP OF PARTIES**

2414 The Parties intend that the Contractor shall perform the Collection Services as an independent  
2415 contractor engaged by the City and not as an officer or employee of the City nor as a partner of  
2416 or joint venturer with the City. No employee or agent of the Contractor shall be or shall be  
2417 deemed to be an employee or agent of the City. Except as expressly provided herein, the  
2418 Contractor shall have the exclusive control over the manner and means of conducting  
2419 Collection Services and all persons performing such services. The Contractor shall be solely  
2420 responsible for the acts and omissions of its officers, employees, subcontractors, and agents.  
2421 Neither the Contractor nor its officers, employees, subcontractors, and agents shall obtain any  
2422 rights to retirement benefits, workers' compensation benefits, or any other benefits which  
2423 accrue to the City employees by virtue of their employment with the City. The Contractor or its  
2424 employees shall not provide, directly or indirectly, any gifts or gratuities to any City employee or  
2425 representative.  
2426

2427 **11.2 COMPLIANCE WITH LAW**

2428 In providing the services required under this Agreement, the Contractor shall at all times, at its  
2429 sole cost, comply with all Applicable Laws of the United States, the State of California, San  
2430 Joaquin County, the City, and other states or counties which may have jurisdiction over any  
2431 service provided in this Agreement and with all applicable regulations promulgated by any  
2432 federal, state, regional, or local administrative and regulatory agencies, now in force and as  
2433 they may be enacted, issued, or amended during the term of this Agreement, including all  
2434 permit requirements for facilities used to provide Collection Services.  
2435

2436 **11.3 GOVERNING LAW**

2437 This Agreement shall be governed by, and construed and enforced in accordance with, the laws  
2438 of the State of California.  
2439

2440 **11.4 JURISDICTION**

2441 Any lawsuits between the Parties arising out of this Agreement shall be brought and concluded  
2442 in the courts of the State of California, which shall have exclusive jurisdiction over such  
2443 lawsuits. With respect to venue, the Parties agree that this Agreement is made in and will be  
2444 performed in San Joaquin County. All depositions made by City employees shall be made in  
2445 San Joaquin County, unless another location is selected by the City.  
2446

2447 **11.5 ASSIGNMENT**

2448 **A. Definition**

2449 For purposes of this Article, "assignment" shall include, but not be limited to: (i) a sale,  
2450 exchange, or other transfer of substantially all of the Contractor's assets dedicated to service  
2451 under this Agreement to a third party; (ii) a sale, exchange, or other transfer of thirty (30)  
2452 percent or more of the outstanding common stock of the Contractor; (iii) any reorganization,  
2453 consolidation, merger recapitalization, stock issuance or reissuance, voting trust, pooling  
2454 agreement, escrow arrangement, liquidation, or other transaction to which the Contractor or any  
2455 of its shareholders is a party which results in a change of ownership or control of thirty (30)  
2456 percent or more of the value or voting rights in the stock of the Contractor; and (iv) any  
2457 combination of the foregoing (whether or not in related or contemporaneous transactions) which  
2458 has the effect of any such transfer or change of ownership. If the Contractor is not a  
2459

corporation, an assignment shall also include, among other things, any transfer or reorganization that has an effect similar to the situations described in foregoing sentence for corporations. For purposes of this Article, the term "proposed assignee" shall refer to the proposed transferee(s) or other successor(s) in interest pursuant to the assignment. If the Contractor is a subsidiary of another corporation or business entity, any assignment, as defined above, by the parent company or corporation shall be considered an assignment by the Contractor.

#### **B. City Consent**

The Contractor acknowledges that this Agreement involves rendering a vital service to the City's residents and businesses, and that the City has relied upon the Contractor's representation of its experience and financial resources in qualifying the Contractor to provide Collection Services under this Agreement. Except as provided in this Article, the Contractor shall neither assign its rights nor delegate, subcontract, or otherwise transfer its obligations under this Agreement to any other person or entity without the prior written consent of the City. Any such assignment without the consent of the City shall be void and the attempted assignment shall constitute a material breach of this Agreement. Under no circumstances shall the City be required to consider any proposed assignment if there is an uncured Event of Default at any time during the period of consideration.

#### **C. Requirements of Contractor**

If the Contractor requests the City's consideration of and consent to an assignment, the City may deny or approve such request in its complete discretion, and with or without a detailed review of the proposed assignment. No request by the Contractor for consent to an assignment need be considered by the City unless and until the Contractor has met the following requirements:

1. The Contractor shall pay the City its reasonable expenses for attorney's fees and investigation costs to investigate the suitability of any proposed assignee, and to review and finalize any documentation required as a condition for approving any such assignment.
2. The Contractor shall furnish the City with audited financial statements of the proposed assignee's operations for the immediately preceding five (5) operating years.
3. The Contractor shall furnish the City with satisfactory proof that the proposed assignee has the demonstrated technical capability to perform all Collection Services and to provide exceptional service to customers, including: (i) that the proposed assignee has at least ten (10) years of Solid Waste management experience on a scale equal to or exceeding the scale of operations conducted by the Contractor under this Agreement; (ii) in the last five (5) years, the proposed assignee has not suffered any significant citations or other censure from any state, federal, or local environmental laws and the assignee has provided the City with a complete list of such citations and censures; (iii) the proposed assignee has at all times conducted its operations in an environmentally safe and conscientious fashion; (iv) the proposed assignee conducts its Solid Waste management practices in substantial compliance with all federal, state, and local laws regulating the Collection and Disposal of Solid Waste including Hazardous Waste; and (v) the proposed assignee has in the last five (5) years provided excellent service to existing franchised Customers and has not been subject to any administrative or legal actions related to failure to provide adequate service under a contract or franchise; or



any other information required by the City to ensure the proposed assignee can fulfill the terms of this Agreement in a timely, safe, and effective manner. The City reserves the right to approve an assignment conditioned on an increase to the instrument for securing performance required pursuant to Article 9.6 and contained in Exhibit K and/or use of another mechanism in addition to, or as an alternative to, the instrument for securing performance required in Article 9.6 and contained in Exhibit K.

#### **D. Application and Transfer Fee**

Any application for transfer of this Agreement shall be governed by the following conditions:

1. Any application for transfer of this Agreement shall be made in a manner prescribed by the City Representative. The application shall include a transfer fee in an amount to be set by resolution of the City Council to cover the cost of all direct and indirect administrative expenses including consultants necessary to adequately analyze the application and to reimburse the City for all direct and indirect expenses. In addition, the Contractor shall reimburse the City for any and all additional costs related to the assignment requested and not covered by the transfer fee. Bills shall be supported with evidence of the expense or cost incurred. The applicant shall pay such bills within (30) days of receipt.
2. The transfer fees are over and above any other fees or charges specified in this Agreement.

#### **E. Transition**

If the City consents to an assignment, at the point of transition, the Contractor shall cooperate with the City and subsequent contractor(s) or subcontractor(s) to assist in an orderly transition which shall include, but not be limited to, the Contractor providing route lists and billing information listing accounts, and Best Efforts to minimize disruption to Customers.

### **11.6 DISPUTE RESOLUTION**

#### **A. Continue Performance**

Except for an Event of Termination, in the event of any dispute arising under this Agreement, the City and the Contractor shall continue performance of their respective obligations under this Agreement and shall attempt to resolve such dispute in a cooperative manner, including but not limited to, negotiating in good faith.

#### **B. Mediation**

Any unresolved dispute arising between the Parties under this Agreement shall first be submitted to non-binding mediation before a recognized mediator having experience with agreements of this nature and that is mutually acceptable to the Parties, provided that neither Party shall unreasonably withhold its acceptance. If the parties are unable, after a period of thirty (30) days from commencement of the dispute resolution process, to agree on a mediator, either Party shall be entitled to petition a court of competent jurisdiction to appoint such a mediator for the Parties. Each Party shall bear its own costs, including attorney's fees, incurred in connection with the mediation. If the mediation does not result in a resolution of the dispute that is acceptable to both Parties, either Party may pursue its legal remedies.

**11.7 NON-DISCRIMINATION**

The Contractor shall not discriminate in the provision of service or the employment of persons engaged in performance of this Agreement on account of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, or sex of such persons or as otherwise prohibited by law.

**11.8 SUBCONTRACTING**

The Contractor shall not engage any subcontractors for performance of Collection Services without the prior written consent of the City.

**11.9 BINDING ON SUCCESSORS**

The provisions of this Agreement shall inure to the benefit to and be binding on the successors and permitted assigns of the Parties.

**11.10 TRANSITION TO NEXT CONTRACTOR**

If at any point the City desires to grant to a third party Collection Services which are contracted to the Contractor under this Agreement, the Contractor shall be obligated to cooperate with City and subsequent contractor(s) to assist in an orderly transition. One (1) year prior to the conclusion of the Base Term and of any Extension, and in order to assist with the competitive bid process to award the Collection Services at the conclusion of the Term, the Contractor shall provide the City with such information as may reasonably be requested, including but not limited to, route maps and days of collection, account names and phone numbers, and level of service provided. The Contractor shall cooperate with and schedule with the City and new contractor its removal of all Carts distributed to each Customer. The Contractor and the new contractor may choose at their discretion to enter into negotiations to sell (in part or all) Collection vehicles, Bins, and Containers to the new contractor. Failure to provide full cooperation with a transition may, at the City's sole discretion, preclude the Contractor from participating in future competitive procurements.

**11.11 PARTIES IN INTEREST**

Nothing in this Agreement, whether express or implied, is intended to confer any rights on any persons other than the Parties to it and their representatives, successors and permitted assigns.

**11.12 WAIVER**

The waiver by either Party of any breach or violation of any provisions of this Agreement shall not be deemed to be a waiver of any breach or violation of any other provision not of any subsequent breach of violation of the same or any other provision. The subsequent acceptance by either party of any monies which become due hereunder shall not be deemed to be a waiver of any preexisting or concurrent breach of violation by the other party of any provision of this Agreement.

**11.13 CONDEMNATION**

In addition to the rights in Article 10.4 the City fully reserves the rights to acquire the Contractor's property utilized in the performance of this Agreement, by purchase or through the exercise of the right to eminent domain.

2603 **11.14 NOTICE**

2604  
2605 **A. Notice Procedures**

2606 All notices, demands, requests, proposals, approvals, consents and other communications with  
2607 this Agreement require, authorize, or contemplate all, except as otherwise specifically provided,  
2608 be in writing and shall be effective when personally delivered to a representative of the Parties  
2609 at the address below or deposited in the United States mail, first class postage prepaid,  
2610 addressed as follows:

2611  
2612  
2613 If to the City: Attention: City Manager  
2614 City Hall  
2615 425 North El Dorado Street  
2616 Stockton, CA 95202

2617  
2618 If to the Contractor: Attention: Sacramento Area Manager  
2619 USA Waste of California, Inc.  
2620 11931 Foundation Place, Suite 200  
2621 Gold River, CA 95670

2622  
2623 and

2624  
2625 District Manager  
2626 Stockton Scavengers Association  
2627 1240 Navy Drive  
2628 Stockton, CA 95206  
2629

2630 The address to which communications may be delivered may be changed from time to time by  
2631 a notice given in accordance with this Section.

2632  
2633 **B. Facsimile Notice Procedures**

2634  
2635 1. Facsimile notice may be substituted for written notice with the following limitations:

2636  
2637 a. Facsimile notice shall be considered valid and delivered at such time as an  
2638 authorized representative of the receiving Party acknowledges receipt in writing  
2639 or by a facsimile acknowledgement to the sending Party.

2640  
2641 b. Written notice must follow any facsimile notice. This follow-up written notice in  
2642 order for the facsimile notice to be valid.

2643  
2644 2. If above conditions are met, facsimile notice will be considered effective from date and  
2645 time of transmission as indicated on receiving parties original copy of the transmission.

2646 3. Facsimile notices must be sent to the following addressees:

2647  
2648 If to the City: City Manager  
2649 Fax number (209) 937-7149

2650  
2651 If to the Contractor: District Manager  
2652 Fax number (209) 948-4013

2653  
2654 4. The facsimile number to which communications may be transmitted may be changed  
2655 from time to time by a notice given in accordance with this Section.  
2656

2657 **11.15 REPRESENTATIVE OF THE PARTIES**

2658 All actions to be taken by the City shall be taken by the City Council except as provided below.  
2659 The City Council may delegate, in writing, authority to the City Manager and/or to other City  
2660 officials, in turn, to delegate in writing some or all of such authority to subordinate officers. The  
2661 Contractor may rely upon actions taken by such delegates if they are within the scope of the  
2662 authority properly delegated to them.

- 2663
- 2664 1. The City Manager shall be responsible for administration of this Agreement on behalf of  
2665 the City.
  - 2666
  - 2667 2. The City Manager may delegate authority to appropriate City employees or other  
2668 appropriate persons.
  - 2669
  - 2670 3. The City Council reserves to itself all discretionary and administrative authority not  
2671 otherwise expressly delegated pursuant to ordinance. Whenever this Agreement  
2672 requires approval by the City, the approval may be given by the City Manager or his or  
2673 her designee, subject to appeal to the City Council by the Contractor.  
2674

2675 The Contractor shall, by the Effective Date, designate in writing a responsible officer who shall  
2676 serve as the representative of the Contractor in all matters related to this Agreement and shall  
2677 inform the City in writing of such designation and of any limitations upon his/her authority to  
2678 bind the Contractor. The City may rely upon action taken by such designated representative as  
2679 action of the Contractor unless they are outside the scope of the authority delegated to him/her  
2680 by the Contractor as communicated to the City.

2681  
2682 **11.16 CITY FREE TO NEGOTIATE WITH THIRD PARTIES**

2683 The City may, at any time, investigate all options for the provision of the exclusive and non-  
2684 exclusive services granted to the Contractor by this Agreement. Without limiting the generality  
2685 of the foregoing, the City may solicit proposals from the Contractor and from third parties for the  
2686 provision of any or all Collection Services and may negotiate and execute agreements for such  
2687 services which will take effect upon the expiration, or earlier termination under Article 10.7, of  
2688 this Agreement and/or any future agreements.  
2689

2690 **11.17 CONTRACTOR TO DEFEND AGREEMENT**

2691 The Contractor may at its election, and if it makes that election, at its sole expense defend the  
2692 validity of this Agreement against all challenges to the Agreement by any entity or person not a  
2693 Party to this Agreement. Neither the City nor the Contractor shall have any liability to the other  
2694 resulting from a determination that this Agreement violates any state or Federal law, statute, or

2695 constitutional provision, except to the extent such determination relates to the Contractor's  
2696 willful misconduct or negligence. However, if the Contractor elects to not defend the validity of  
2697 this Agreement, the City may, upon reasonable notice, terminate the Agreement at its election,  
2698 and if it makes that election, it shall have no liability to the Contractor resulting from that  
2699 election to terminate. The Contractor's sole remedy shall be to receive its share of Gross Rate  
2700 Revenues received by the City and as specified in Articles 6.3 and 6.4, for services rendered by  
2701 the Contractor up to the date of termination, minus any offsets or monies due the City provided  
2702 for under this Agreement.



**ARTICLE 12**  
**MISCELLANEOUS AGREEMENTS**

**12.1 ENTIRE AGREEMENT**

This Agreement, including the Exhibits, represents the full and entire Agreement between the Parties with respect to the matters covered herein.

**12.2 SECTION HEADINGS**

The article headings and sections headings in this Agreement are for convenience of reference only and are not intended to be used in the construction of this Agreement, nor to alter or affect any of its provisions.

**12.3 REFERENCES TO LAWS**

All references in this Agreement to laws shall be understood to include such laws as they may be subsequently amended or recodified, unless otherwise specifically provided.

**12.4 INTERPRETATION**

This Agreement shall be interpreted and construed reasonably and neither for nor against either party, regardless of the degree to which either Party participated in its drafting.

**12.5 AMENDMENT**

This Agreement may not be modified or amended in any respect except by a written agreement duly approved and signed by the Parties.

**12.6 SEVERABILITY**

If any nonmaterial provision of this Agreement is for any reason deemed to be invalid and unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this Agreement which shall be enforced as if such invalid or unenforceable provision had not been contained herein.

**12.7 COUNTERPARTS**

This Agreement may be executed in counterparts each of which shall be considered an original.

**12.8 MISCELLANEOUS**

**A. Privacy**

The Contractor shall strictly observe and protect the rights of privacy of Customers during provision of all Collection Services. Information identifying individual Customers or the composition or contents of Customer's Solid Waste, Recyclables or Green Waste and Food Waste shall not be revealed to any person, governmental unit, private agency, or company, unless upon the authority of a court of law, by statute, written request from a law enforcement agency, or upon valid authorization of the Customer. This provision shall not be construed to preclude the Contractor from preparing, participating in, or assisting in the preparation of waste characterizations studies or waste stream analysis which may be required by a regional, state, or federal agency.

**B. Advice**

Each of the Parties has received the advice of legal counsel prior to signing this Agreement. Each Party acknowledges no other party or agent or attorney has made a promise, representation, or warranty whatsoever, express or implied, not contained herein concerning





the subject matter herein to induce another party to execute this Agreement. The Parties agree no provision or provisions may be subject to any rules of construction based upon any party being considered the party "drafting" this Agreement.

#### 12.9 EXHIBITS

Each of the Exhibits identified is attached hereto and incorporated herein and made a part hereof by this reference.

IN WITNESS WHEREOF, the City and the Contractor have executed this Agreement as of the day and year first above written.

ATTEST:

CITY CLERK

By

CITY ATTORNEY

APPROVED AS TO FORM:

By



STOCKTON ("City")

Title

ATTORNEY

APPROVED AS TO FORM:

By

USA Waste of California, Inc. ("Contractor")

By

Title

Ordinance 013-03 adopted by Stockton City Council on April 29, 2003

Date Revision 1 approved: \_\_\_\_\_



**EXHIBIT A**  
**SCOPE OF SERVICES**

**1. GENERAL**

The Contractor is to perform the following services under the Agreement:

Weekly Solid Waste Collection

- Residential service using wheeled Carts (or Bins if requested)
- Commercial service using wheeled Carts or Bins
- Weekly Recyclables Materials collection from single-family, multi-family, and mobile home parks and commercial Customers
- Recyclables Materials Collection from commercial Customers requesting Recyclables Collection Service in excess of 90-gallons per week
- Weekly Green Waste and Food Waste Collection from all single-family Customers and from multi-family and commercial Customers requesting Green Waste and Food Waste Collection Service. Such service will be provided with the use of wheeled Carts collected by the residential Green Waste truck.
- Recyclable Materials processing and marketing services
- Other services
  - Neighborhood clean-up program
  - Community cleanup events
  - Christmas tree collection
  - On-call Bulky Items collection
  - Side yard service for disabled or frail elderly residential customers
  - Collection from City buildings and properties
  - Collection from Public Containers
  - Special events services (See Exhibit G)
  - Street sweeping
  - Seasonal leaf collection

For all services required under the Agreement, the Contractor will be responsible for purchasing, distributing, and maintaining any Collection Carts, Containers, or Bins provided to Customers. The cost of any such Containers should be included in the Rates. The Contractor will not be permitted to separately bill the Customers for the rental or use of Bins or Carts, since provision of these containers is included in the Rates.

Payment of all transfer, disposal, and processing facility tipping fees are the part of the Contractor's obligations under the Agreement. Compensation for such expenses are included in the Contractor rates.

**2. SOLID WASTE COLLECTION**

The Solid Waste Collection Services will include the following services:

2816           **Residential Solid Waste Collection**  
2817           **Commercial Solid Waste Collection**

2818  
2819   The Contractor is responsible for collecting and transporting Solid Waste to the Designated  
2820   Disposal or Transfer Facility and conforming with the Designated Disposal or Transfer Facility's  
2821   receiving and unloading standards and hours of operation. The Contractor is responsible for  
2822   paying the tipping fee at the Designated Disposal or Transfer Facility for all tonnage delivered  
2823   as part of conducting the Collection Services.  
2824

2825   **Residential Service**

2826   The Contractor will provide weekly Solid Waste collection services to residential Customers.  
2827   Cart Service will be provided to all single-family residences and to multi-family dwellings and  
2828   mobile home parks at the property owner's request. The standard service will include Collection  
2829   at the curb, and should be, at a minimum, provided using semi-automated or automated  
2830   Collection vehicles. The Contractor will provide side yard service, at an additional fee, to  
2831   individuals desiring the convenience of side yard pickup. Disabled and frail elderly residential  
2832   Customers shall be provided this service at no cost in accordance with Section 10 of this  
2833   Exhibit.  
2834

2835   The City requires provision of industry-standard wheeled Carts for Solid Waste with attached  
2836   lids in the following capacities: approximately 30 gallons, 60 gallons, and 90 gallons.  
2837

2838   **Commercial Service**

2839   Contractor will provide collection of Solid Waste generated by commercial Customers with  
2840   Container sizes and Collection frequencies to serve the needs of the Customer. The Contractor  
2841   will offer the following types of Collection Containers as options to its Customers: industry-  
2842   standard wheeled Carts (approximately 30 gallons, 60 gallons, and 90 gallons) and industry-  
2843   standard Bins. The Collection Container size will be variable. Bins ranging from 1 to 9 cubic  
2844   yards of capacity may be offered by the Contractor. Cart and Bin service will be provided on a  
2845   regularly scheduled basis at a frequency, not less than once per week, specified by the  
2846   Customer. Cart or Bin Services provided to manufacturing facilities, factories, food processors,  
2847   refineries, and publicly operated treatment works are excluded from this Agreement.  
2848

2849   **Multi-Family and Mobile Home Park Solid Waste Collection**

2850   The Contractor will collect Solid Waste from multi-family and mobile home park Customers. The  
2851   Contractor will provide two Collection options to these Customers upon request: Cart Service,  
2852   which provides each residential unit within the complex with a separate Solid Waste Cart,  
2853   Recyclables Materials, and Green Waste and Food Waste, and Bin Service, which provides  
2854   Solid Waste Bins that are shared by residential units, Recyclable Materials service and Green  
2855   Waste and Food Waste Service. The selection of service method will be made by the  
2856   Customer.  
2857

2858   In cases where Cart Service is provided to multi-family or mobile home park residents, the  
2859   Contractor will bill and collect rates for each residential unit separately if requested by the  
2860   property owner. If Cart Service is specified by the property owner, it is the City's intention that it  
2861   will be provided to all the multi-family or mobile home park residents within the complex.  
2862

2863   **Debris Box and Compactor Solid Waste**

2864   The Contractor will provide Compactors and Debris Boxes for regular and on-call residential  
2865   and commercial Customers. The Debris Box size will be variable and will include Debris Boxes

providing 10 to 40 cubic yards of capacity. The Contractor will arrange, on an on-call-basis, to provide Debris Box Customers with Containers sized to appropriately service their needs. The Contractor is responsible for Collecting the Compactor or Debris Box and transporting it to the Designated Disposal and Transfer Facility. The Contractor must conform with the Designated Disposal and Transfer Facility receiving and unloading standards.

Debris Box and Compactor Services are limited to the Collection of Compactor or Debris Box Solid Waste from residential and commercial Customers and Construction and Demolition Debris from residential Customers. Debris Box and Compactor Services provided to manufacturing facilities, factories, food processors, refineries, and publicly operated treatment works is excluded from this Agreement. Construction and Demolition Debris Services provided to construction contractors at residential premises are excluded from this Agreement. Collection of commercial Recyclables using Compactors or Debris Boxes is excluded from this Agreement. The Contractor may, at its sole discretion, provide Debris Box Collection Services for commercial Recyclables in the City on a nonexclusive basis as a separate, distinct service apart from the Collection Services. The Contractor must provide additional special services (e.g., long walks, enclosures, extra solid waste pickup, etc.) for additional fees, as proposed by the Contractor.

### **3. RECYCLABLE MATERIALS COLLECTION**

The Contractor is responsible for the weekly Collection of Recyclables in wheeled Carts generated by all Customers. The Contractor is required to provide additional Collection of commercial Recyclables upon request of any commercial Customer. The Collection of commercial Recyclables in the City will be on a nonexclusive basis.

The Recyclables Collection Services will be provided weekly on the same day as Solid Waste Collection. Recyclable Materials collected from all single-family residential Customers and multi-family and mobile home park Solid Waste Customers that receive Cart Service shall be Collected curbside. The Contractor will provide side yard service to frail and disabled customers for free and, at an additional fee, to individuals desiring the convenience of side yard pickup. Recyclables from commercial Customers and multi-family and mobile home park Customers that receive Bin Service shall be Collected from designated drop-off Bins at one or more on-site locations designated by the property owner.

The materials to be Collected include, but are not limited to, the following:

- Newspaper (including inserts, coupons, and store advertisements)
- Corrugated cardboard
- Mixed waste paper (including office paper, computer paper, magazines, junk mail, catalogs, kraft bags and kraft paper, paperboard, egg cartons, phone books, brown paper, grocery bags, colored paper, construction paper, envelopes, legal pad backings, shoe boxes, cereal and other similar food boxes)
- Chipboard
- Glass containers (including brown, clear, and green glass bottles and jars)
- Aluminum (including beverage containers, foil, food containers, small scrap metal)
- Milk, soy and juice cartons
- Steel or tin cans
- Small scrap metal
- All plastic containers (#1 through #7)
- Electronic scrap (no monitors, televisions or CRTs (cathode ray tubes) at curbside)

- Small appliances
- Used motor oil and oil filters, empty latex paint cans, household batteries
- Any other materials mutually agreed to by the Contractor and the City.

Recyclables will be collected fully commingled (Single Stream) using wheeled Carts.

Used motor oil and oil filters shall be collected outside of the wheeled Carts, using containers (including plastic jugs and plastic bags) provided or specified by the Contractor. The used motor oil and oil filter collection service is for residential single family, multi-family, and mobile home park Customers only and does not apply to commercial Customers.

Contractor will provide industry-standard approximately 30-, 60 and 90-gallon capacity wheeled Carts for Recyclables Customers. Cart Collection should be provided using semi-automated or automated Collection vehicles. The Contractor will be responsible for collecting the Recyclables and transporting them to the processing facility selected by the Contractor.

For commercial Customers and multi-family dwellings or mobile home parks receiving Bin Service, a method of collecting the Recyclable Materials, which is different than that described for single-family residences, may be proposed for multiple-family dwellings and mobile home park Customers provided that all listed materials are collected. Exception: used motor oil and oil filters will be collected from multi-family and mobile home park Customers receiving Bin Service but not from other commercial Customers.

The Contractor will accept responsibility for maintaining minimum contamination levels of the Recyclable Materials. The Contractor will collect and transport the Recyclable Materials to the recyclables processing facility selected by the Contractor.

This Agreement with regards to Collection of Recyclables from commercial Customers is not exclusive. Under this Agreement, the Contractor shall act as the "Recycler of Last Resort" for commercial Customers and shall, if requested, offer to provide Recyclables Collection in excess of 90-gallons per week to any commercial Customer. Such request may be directly from a commercial Customer, or may be from either the City or a contractor, acting on behalf of the commercial Customer. The Contractor shall provide this additional service to commercial Customers without additional charge or compensation for up to a maximum of four (4) cubic yards of Recyclables per week per Customer. If the City requires additional Recycling services to be provided to commercial Customers in excess of four (4) cubic yards of Recyclables per week per Customer, such requirement shall be considered a Change in Scope and shall be subject to the provisions of Article 5.7. .

#### **4. GREEN WASTE AND FOOD WASTE COLLECTION**

The Contractor will provide Green Waste and Food Waste Collection Services to all Cart Customers including multi-family and mobile home park Customers receiving Cart Service upon request, to any Bin Customers and multi-family and mobile home park residences receiving Bin Service. The Contractor will provide residential Green Waste and Food Waste curbside Collection Service every week on the same collection day as Solid Waste and Recyclables Collection. The Contractor will provide commercial Green Waste and Food Waste Collection at least weekly to any Bin Customer requesting the service and more frequently by mutual agreement of the Contractor and the Bin Customer. The Contractor will provide industry-standard 90-gallon capacity wheeled Carts for Green Waste and Food Waste Service

recipients. Cart Collection should be provided using semi-automated or automated Collection vehicles. Contractors shall deliver instructional brochures to all Cart Customers prior to the Effective Date. If requested by the City and with no additional charge or compensation, the Contractor shall deliver City-provided kitchen pails during the rollout of Green Waste and Food Waste Services to all Customers receiving Cart Service prior to the Effective Date. This distribution of kitchen pails during the rollout is a one-time service of the Contractor. The Contractor is not obligated to distribute kitchen pails after the initial rollout. The Contractor shall use Best Efforts to provide technical assistance to Food Waste Service recipients on the proper handling and diversion of Food Waste. Such efforts shall include distribution of Food Waste brochures to all Food Waste service recipients, workshops promoting the Food Waste program, and on-site technical assistance to commercial Customers receiving Food Waste services. Contractor may offer Green Waste and Food Waste in industry standard Collection Bins to large volume generators. The Contractor will be responsible for Collecting the Green Waste and Food Waste and transporting it to a Green Waste Processing Facility.

## **5. RECYCLABLE MATERIALS PROCESSING AND MARKETING**

The Contractor will be responsible for all Recyclable Materials processing and marketing services associated with the collection of Recyclable Materials under this Agreement. The Contractor shall be required to provide processing facility capacity and shall designate a facility(ies) for such purpose in the proposal. In meeting the obligation to provide processing facility capacity, the Contractor may purchase, lease, subcontract, or make other arrangements with a new or existing facility for the processing and marketing of the Recyclable Materials collected in the City. Ownership or leasing arrangements and costs will be the responsibility of the Contractor. The Contractor will ensure that any applicable purchase or lease agreements with property owners and the local land-use authorities are implemented. The Contractor will have the responsibility to ensure the technical and environmental suitability of any processing site for its intended purpose. The Contractor will be compensated for Recyclable Materials processing and marketing solely through the Rates.

The Contractor will be responsible for arranging for the transportation of the Recyclable Materials to the processing facility. If the Contractor chooses to consolidate the Recyclable Materials to reduce transportation costs to a distant processing site, the Contractor will be fully responsible for securing and operating a staging area for temporary storage, consolidation, and loading of materials into transfer vehicles for long-hauling to the processing facility.

The Contractor will be required to receive and process Recyclable Materials, prepare Recyclable Materials for markets, and to market the recovered materials. The material types to be accommodated by the facility are outlined in Section 3. The Contractor will market and sell Recyclables collected pursuant to the Agreement. All revenues earned from the sale of the Recyclables will be retained by the Contractor.

By mutual written agreement, the Contractor will process and market additional types of Recyclables.

Disposal of Residue remaining after the segregation of the Recyclables Materials will be the Contractor's responsibility. The Contractor will transport the Residue to the Designated Disposal or Transfer Facility or to another facility of its choosing. The costs of Residue transportation and Disposal will be borne by the Contractor and shall be included in the Rates.

## **6. NEIGHBORHOOD CLEANUP PROGRAM**

In cooperation with Code Enforcement staff, Contractor will provide the equivalent of six (6) forty (40) cubic yard debris boxes for recycling and solid waste collection in the five neighborhood clean up zones identified by the City. This service is for residential single family, multi-family and mobile home park Customers only and does not apply to commercial Customers. The Contractor shall make every effort to ensure that materials Collected through the neighborhood cleanup program are Diverted from Disposal. The Contractor will be responsible for providing Recycling Collection and processing services such that no Recyclables are Disposed. The costs of Residue transportation and Disposal will be borne by the Contractor and shall be included in the Rates. The Contractor will be responsible for delivery of the Solid Waste to the Designated Disposal and Transfer Facility and cleanup of each drop-off site at the conclusion of each event.

The Contractor will also provide curbside collection of Bulky Items for all residential single family, multi-family and mobile home park Customers during the neighborhood cleanup program. Multi-family and mobile home complexes shall have on-site drop-off sites whenever possible, to reduce the amount of material deposited at the curb. Each Customer will receive one free pickup per year. The Contractor will provide additional pickups for a special fee. The Contractor will then be required to deliver the collected Bulky Items to a processing facility for recovery, or to the Designated Disposal or Transfer Facility, depending on the type of materials Collected. The Contractor will use Best Efforts to ensure that all Recyclable Materials are Diverted from Disposal, including reusable furniture, doors, windows and fixtures, mattresses, carpet and foam carpet pads, appliances, white goods and brown goods, electronic scrap including computers, monitors and peripherals, televisions, consumer electronics (radios, video recorders), telephones, small appliances, and unlimited amounts of Green Waste and Single-Stream Recyclable Materials. The Contractor will use Best Efforts to Divert fifty percent (50%) of all materials collected through the neighborhood cleanup program.

## **7. COMMUNITY CLEANUP EVENTS**

The Contractor will provide, without charge to the City or additional compensation to the Contractor, up to five (5) community cleanup events sponsored by the City (such as creek or bike path cleanups). The Contractor shall work with the City to arrange for the use of drop-off sites for the community cleanup events. The Contractor will be responsible for providing Recycling Collection and processing services such that no Recyclables are Disposed. The costs of Residue transportation and Disposal will be borne by the Contractor and shall be included in the Rates. The Contractor will be responsible for delivery of the Solid Waste to the Designated Disposal and Transfer Facility and cleanup of each drop-off site at the conclusion of each event.

## **8. CHRISTMAS TREE COLLECTION**

The Contractor will, without additional compensation, Collect all Christmas trees discarded by all City residents (including all single-family residences, multi-family, and mobile home park residents and commercial Customers) during the first three regularly scheduled Collection days after Christmas Day for each Collection route. The Contractor shall deliver all Christmas trees Collected during this period to the Green Waste Processing Facility.

## **9. ON-CALL BULKY ITEMS PICK-UP**

Contractor shall provide on-call pick-up Bulky Items to any Customer requesting the service at the special fees specified in Exhibit I. The Contractor shall use Best Efforts to ensure that all



Recyclable Materials are Diverted from Disposal and the Contractor shall use Best Efforts to Recycle or Divert from Disposal fifty percent (50%) of all materials collected through the Bulky Items pick-up program.

#### **10. SIDE YARD SERVICE FOR DISABLED AND FRAIL ELDERLY RESIDENTIAL CUSTOMERS**

Qualified individuals requiring side yard service due to physical disability or frailty, as determined by a physician, will be provided that service by the Contractor at no additional fee. The side yard service will include collection of Solid Waste, Recyclable Materials, and Green Waste and Food Waste.

#### **11. COLLECTION SERVICES FOR CITY BUILDINGS AND PROPERTIES**

As part of the Agreement, the Contractor is required to provide Solid Waste, Recyclable Materials, and Green Waste and Food Waste collection services to all City buildings and properties listed in Exhibit F. This service is to be provided at no additional charge by the Contractor or compensation to the Contractor. The service level may include Cart Service or Bin service as specified by the facility. Collection will be provided by the Contractor at a frequency acceptable to the facility. The Contractor will be responsible for Collecting, transporting, and disposing all Solid Waste to the Designated Disposal or Transfer Facility; Collecting, transporting, processing, and marketing all Recyclable Materials; and Collecting and transporting Green Waste and Food Waste to a Green Processing Waste Facility. The Contractor is responsible for educating all building users to use Recycling services.

#### **12. COLLECTION FROM PUBLIC CONTAINERS**

The Contractor will service designated public Solid Waste and Recycling Containers throughout the City at no additional charge or compensation if such Containers are provided by the City. At the current time, the City has public Containers at approximately 50 locations. If additional service is needed at a later date, the Contractor will provide Collection of Solid Waste and Recyclables from not more than 25 additional Containers. The Contractor will be responsible for Collecting and transporting all Solid Waste from the public Solid Waste Containers to the Designated Disposal and Transfer Facility and Collecting, transporting, processing, and marketing all Recyclables on a weekly basis from public Recycling Containers. The frequency of Collection shall be specified by the City and shall be at least once weekly.

#### **13. PUBLIC EDUCATION**

The Contractor is required to provide Customer information and public education throughout the Term of the Agreement. The public education services are detailed in the Contractor's final public education plan as contained in Exhibit E, and will include, but are not limited to, providing information regarding:

- Quarterly newsletter
- Program implementation information
- Implementation of the Food Waste collection program
- Change in service
- Incorrect setout notices

- 3112 • Bulky Items collection
- 3113
- 3114 • Christmas tree Collection services
- 3115
- 3116 • Annual promotion to encourage source reduction, Recycling, backyard composting, and
- 3117 Green Waste and Food Waste programs
- 3118
- 3119 • Availability of side yard service for disabled and frail elderly Customers
- 3120
- 3121 • Multi-family outreach program designed to increase Recycling participation in all multi-
- 3122 family buildings, including site visits, brochures and Recycling guides
- 3123
- 3124 • Commercial outreach program designed to increase Recycling participation at all
- 3125 commercial businesses, including waste audits, brochures and Recycling guides
- 3126
- 3127 • Providing school outreach services including school assemblies, classroom
- 3128 presentations, demonstrations and tours of Recycling Facilities, upon request
- 3129
- 3130 • Providing Recycling education to users of facilities listed in Exhibit F.
- 3131

#### 3132 **14. STREET SWEEPING AND SEASONAL LEAF COLLECTION**

3133 See Exhibit H.

#### 3134 **15. FOOD WASTE**

3135 Food Waste including all vegetable waste, fruit waste, grain waste, and dairy waste shall be co-

3136 collected with Green Waste and provided to all Cart Customers and to all Bin Customers

3137 requesting the service. By mutual agreement of the Parties and with the cooperation of the

3138 Green Waste Processing Facility, Contractor shall include Collection of meat waste, fish waste,

3139 non-recyclable paper, and untreated and unpainted wallboard and wood in the Food Waste

3140 Collection program.

3141

**EXHIBIT B**  
**STANDARDS OF PERFORMANCE**

**1. Company Standards**

1. Services are to be completed in thorough and professional manner that constitutes litter-free, reliable, timely, courteous and high-quality service.
2. Contractor shall at all times perform its duties using best industry practice for comparable operations.
3. Personnel shall conduct themselves in a courteous, workmanlike manner.
4. Personnel shall dress in clean, uniform shirts with suitable identification.
5. Color and appearance of collection vehicles, Containers, employee uniforms, and public education materials provided by the Contractor will be designed to provide a standard representation of the company. If subcontractors are included, a distinct but uniform appearance of the subcontractor equipment, vehicles, and personnel will be allowable.

**2. Collection Containers**

1. Contractor shall provide industry-standard Bins for storage of materials which shall be designated and constructed to be watertight and prevent the leakage of liquids. All Containers with a capacity of 1 cubic yard or more shall meet all applicable federal regulations on Solid Waste Bin safety.
2. Containers shall be clearly labeled to indicate their designation for Collection of Solid Waste, Recyclables, or Green Waste and Food Waste and shall list the types of materials to be stored in the Container for Collection. At the City's request, Contractor shall work cooperatively with the City to develop an acceptable presentation of the logo on the Containers.
3. The Contractor is to provide all Containers to Customers at no charge. Replacement Containers shall be provided free of charge to Customers if previous Container is rendered unserviceable by means other than the Customer's action.
4. All Carts shall be wheeled Carts with attached lids and a handle to allow for easy movement.
5. All Containers shall be a standard color selected by the Contractor with input from the City. Different colors may be selected for Solid Waste, Recyclables, and Green Waste and Food Waste Containers.
6. Contractor shall select the Container manufacturer. Contractor responsible for distributing all Containers to Customers by June 1, 2004 and as requested by new Customers during the Term of this Agreement.
7. Contractor shall maintain, repair, clean, paint, and replace Containers as needed to maintain a clean, attractive, functional, new-like condition. All graffiti shall be removed immediately.
8. Contractor shall, at no charge, replace any Containers which become unusable by reason of normal wear and tear or damaged by Collection operations.

**3. Vehicles**

**General**

Contractor shall provide a fleet of industry-standard Collection, and as needed, transfer vehicles sufficient in number and capacity to efficiently perform the work required by the Agreement in strict accordance with its terms. The Contractor agrees to maintain each piece of equipment

used by it in the performance of this Agreement in good order and repair. The Contractor shall have available on service days sufficient backup vehicles and qualified operators to respond to complaints and emergencies.

#### **Vehicle Identification**

The Contractor's name, phone number, and vehicle identification number must be visibly displayed on its vehicles in letters and figures no less than three inches high.

#### **Cleaning and Maintenance**

1. **General.** The Contractor shall maintain all of its properties, facilities, and equipment used in providing service under this Agreement in a safe, neat, clean and operable condition at all times, and shall keep its properties, facilities, and equipment well and uniformly painted, to the satisfaction of the City Representative. Vehicles shall be maintained in such a manner that no leakage of fluids from the collected materials occurs.
2. **Cleaning.** Vehicles used in Collection shall be thoroughly washed at a minimum of once per week, and thoroughly steam cleaned on a regular basis so as to present a clean appearance and minimize odors. All vehicles shall be painted on a regular schedule to maintain a clean, professional, new-like appearance. The City Representative may, at any time, require the painting of any vehicle which does not present a satisfactory appearance. The vehicles shall be painted in a uniform manner; although Solid Waste, Recycling, and Green Waste and Food Waste vehicles may have different painting schemes. All graffiti shall be removed immediately. The City may inspect vehicles at any time to determine compliance with sanitation requirements. The Contractor shall make vehicles available to the County Health Department for inspection at any frequency it requests.
3. **Maintenance.** The Contractor shall (i) inspect each vehicle daily to ensure that all equipment is operating properly. Vehicles which are not operating properly shall be taken out of service until they are repaired and do operate properly; and (ii) perform all scheduled maintenance functions in accordance with the manufacturer's specifications and schedule. The Contractor shall keep accurate records of all vehicle maintenance, recorded according to date and mileage and shall make such records available to the City upon request.
4. **Repairs.** The Contractor shall repair, or arrange for the repair of, all of its vehicles and equipment, including dents, leaks, and other body damage, for which repairs are needed because of accident, breakdown or any other cause so as to maintain all equipment in a neat, safe and operable conditions. If an item of repair is covered by a warranty, Contractor shall obtain warranty performance. The Contractor shall maintain accurate records of repair, which shall include date/mileage, nature of repair and the signature of a maintenance supervisor that the repair has been properly performed.
5. **Inventory.** The Contractor shall furnish sufficient equipment to provide all service required under this Agreement, including backup Collection vehicles. The Contractor shall furnish the City a written inventory of all vehicles, including Collection vehicles, used in providing service, and shall update the inventory annually. The inventory shall list all vehicles by manufacturer, ID number, date of acquisition, type, capacity and

decibel rating. Street sweeping vehicle inventory shall include PM 10 compliance data. Prior to June 1, 2009, Contractor shall furnish an updated inventory listing Low Emission Vehicles compliance in accordance with Article 4.17.

6. **Storage.** The Contractor shall arrange to store all vehicles and other equipment in safe and secure location(s) in accordance with the City's applicable zoning regulations.

#### **Operation**

All vehicles must be registered with the Department of Motor Vehicles of the State of California and inspected by the California Highway Patrol at the frequency required by the state. Vehicles shall be operated in compliance with the California Vehicle Code and all applicable safety and local ordinances.

The Contractor shall not load Collection or transfer vehicles in excess of the manufacturer's recommendations or limitations imposed by state or local weight restrictions on vehicles.

The Contractor shall use all reasonable means to minimize any backing of Collection vehicles.

If the age of a Collection vehicle reaches 15 years, the Contractor must notify the City. This equipment shall be subject to inspection by the City or its designee.

#### **4. Collection Schedule**

1. If the day of Collection on any given route falls on New Year's Day or Christmas Day, the Contractor shall provide Collection Service on the next workday following such holiday and shall not provide Collection Service on such holiday. In the event the holiday schedule of the Designated Disposal or Transfer Facility or Recycling Facility and Green Waste Processing Facility are different than the holidays stated herein, the holiday schedule will be adjusted by the Contractor in consultation with the City to match those of the Facility(ies).
2. The Contractor shall provide one pickup per week for residential Customers from the curbside (with the exception of side yard service for disabled or frail elderly Customers and for Customers paying an additional charge for side yard service).
3. The Contractor shall provide pickups on the schedule requested by the Customer (at least once weekly) for commercial Customers from a location designated by the property owner.

#### **5. Collection Routes**

1. Collection routes shall be established and maintained in such a manner as to provide uniform and efficient Collection Services.
2. The Contractor shall submit route plans to the City Representative for informational purposes at the start of this Agreement, one year prior to the end of the Base Term, at the end of the Base Term, at the end of any Extension and whenever there is a significant routing change. The route plans shall identify the course each vehicle follows, the properties served, approximate starting and ending time for each route, the day of the week the route will be served, etc.
3. Materials Collected shall not be mixed in Contractor's Collection equipment with any materials Collected from another governmental jurisdiction including other cities or counties, without prior approval of the City Representative.

## **6. Collection Requirements**

### **Care of Private Property**

Reasonable care shall be used by the Contractor's employees in handling all Collection Containers and enclosures, and all damage caused thereto by the negligence or carelessness of the Contractor's employees shall be promptly adjusted with the owner thereof. All Collection Containers after emptying thereof by the Contractor's employees shall be returned to within 5 feet of the location from which the same were picked up by the Contractor's employees, upright with lids properly secured, and Contractor's employees shall use all reasonable means to insure same are not deposited in a manner that blocks any driveway, sidewalk, or street. The Contractor shall ensure that its employees close all gates opened by them in making Collections, unless otherwise directed by the Customer, and avoid crossing landscaped areas and climbing or jumping over hedges and fences. The City shall refer complaints about damage to private property to the Contractor. The Contractor shall repair all damage to private property caused by its employees.

### **Noise**

All Collection operations shall be conducted as quietly as possible and shall conform to applicable federal, state, county and City noise level regulations, including the requirement that the noise level during the stationary compaction process not exceed 70 decibels with the exceptions of 85 decibels for 1-minute duration as measured from a distance of fifty (50) feet. The City may conduct random checks of noise emission levels to ensure such compliance. Contractor shall promptly resolve any complaints of noise to the satisfaction of the City Representative.

### **Record of Noncollection**

If any materials Delivered for Collection are not Collected by the Contractor for sufficient reason, Contractor shall provide notice at least 2 inches x 6 inches in size at Contractor's cost. The notice shall provide the Contractor's phone number and indicate the reasons for Contractor's refusal to Collect the materials placed in the Collection Container(s) giving reference to the section of the City Ordinance or to the section of this Agreement which has been violated, and which gives grounds for Contractor's refusal. This information shall either be in writing or by means of a check system. Contractor shall maintain, at Contractor's place of business, a logbook listing all complaints and taggings. Said logbook shall contain the names and date and manner of disposition of each case. Such log shall be kept so that it may conveniently be inspected by representatives of the City upon request.

### **Load Checking**

The Contractor is responsible for inspecting all materials prior to Collection for Hazardous Waste or other unacceptable materials. The Contractor is not responsible for Collection of Hazardous Waste or other unacceptable materials.

The Contractor is responsible for controlling contamination levels of Recyclable Materials and Green Waste and Food Waste through public education efforts and tagging of improper setouts.

## **7. Litter Abatement**

### **Minimization of Spills**

Contractor shall use due care to prevent materials placed in the Collection Containers from being spilled or scattered during the Collection or transportation process. If any material is spilled during Collection, the Contractor shall promptly clean up all spilled materials. Each Collection vehicle shall carry a broom and a shovel at all times for this purpose.

Contractor shall not transfer loads from one vehicle to another on any public street, unless it is necessary to do so because of mechanical failure or accidental damage to a vehicle.

### **Cleanup**

During the Collection transportation process, the Contractor shall clean up litter in the immediate vicinity of any storage area (including the areas where Collections Bins are delivered for Collection) of any materials that escape from the Collection vehicle or Collection Containers as a result of the Contractor's service. In the event that litter not caused by the Contractor's service is in the vicinity of the storage area, the Contractor is required to clean up this litter whether or not Contractor has caused the litter on a one-time basis and shall discuss the spillage directly with the Customer responsible and shall report such instances to the City. The Contractor shall work with the Customer to resolve the spillage problem. The City will attempt to rectify such situations with the Customer if the Contractor has already attempted to do so without success.

### **Covering of Loads**

All materials shall be contained or covered during transportation to the Disposal or processing facility. Material shall not be transported to the Disposal or processing facility in vehicle hoppers.

### **Oil or Other Vehicle Fluid Spills**

The Contractor is responsible for cleaning up all oil or vehicle fluid spills immediately and must notify the City within 24 hours of each such spill. All vehicles must carry an acceptable absorbent material to use in the event of spills. Repair for damages caused by oil or other vehicle spills shall be at the Contractor's expense. The Contractor will follow the spill procedures below:

1. Driver will determine cause and source of spill.
2. Each driver or shop employee is responsible for having enough absorbent in their vehicle to contain or prevent any hydraulic fluid or oil from entering a storm drain or sewer and to clean up small spills as they occur.
3. Driver will contain or stop the leak and clean it up without endangering self.
4. Driver will immediately notify dispatch or supervisor.
5. Driver will not leave the spill until either a supervisor or spill response personnel arrive at the scene.
6. Driver will keep all people, cars, or other vehicles from walking or driving through the spill.

- 3387 7. Driver or spill response personnel will take whatever action possible to prevent the spill  
3388 from entering any storm drain, grates, or other entry points.  
3389

## 3390 **8. Personnel**

### 3391 **General**

3392 Contractor shall furnish such qualified drivers, mechanical, supervisory, clerical and other  
3393 personnel as may be necessary to provide the Collection Services required by this Agreement  
3394 in a safe and efficient manner.  
3395

3396 All Contractor employees must be able to read, write and speak English with sufficient  
3397 proficiency to enable them to successfully meet and adhere to all of the terms of this  
3398 Agreement.  
3399

### 3400 **Driver Qualifications**

3401 All drivers shall be trained and qualified in the operation of Collection vehicles and must have in  
3402 effect a valid license, of the appropriate class with appropriate endorsements, issued by the  
3403 California Department of Motor Vehicles. All Collection vehicle drivers shall also complete the  
3404 Contractor's in-house training program which includes education on the use of all vehicles in  
3405 the Collection fleet, Collection programs, and route information as well as Customer service  
3406 practices and safety information.  
3407

3408 Contractor shall conduct an annual background check on each driver to ensure that the driver is  
3409 not listed as a sexual predator and there is no felony record of violence or violations issued by  
3410 the California Department of Motor Vehicles  
3411

### 3412 **Identification Badge**

3413 Contractor shall require its drivers, and all other employees who come into contact with the  
3414 public, to wear a clean, uniform shirt with an identification badge or other means of identifying  
3415 the employee, as approved by the City Representative.  
3416

### 3417 **Safety Training**

3418 Contractor shall provide suitable operational and safety training for all of its employees who  
3419 utilize or operate vehicles or equipment for Collection or who are otherwise directly involved in  
3420 such services. Contractor shall train its employees involved in Collection to identify, and not to  
3421 collect, Hazardous Waste or Medical and Infectious Waste.  
3422

### 3423 **No Gratuities**

3424 Contractor shall not permit its employees to demand, solicit or accept, directly or indirectly, any  
3425 additional compensation or gratuity from members of the public for the Collection Services  
3426 under this Agreement. Contractor may permit its employees to accept small holiday gifts of  
3427 nominal value.  
3428

### 3429 **Employee Appearance and Conduct**

3430 All employees, while engaged in collection services within the City, shall be attired in suitable  
3431 and acceptable uniform shirts which are subject to approval by the City. The Contractor shall  
3432 use its best efforts to assure that all employees present a neat appearance and conduct  
3433 themselves in a courteous manner. The Contractor shall regularly train its employees in  
3434 customer courtesy, shall prohibit the use of loud or profane language, and shall instruct  
3435 Collection crews to perform the work as quietly as possible. If any employee is found not to be  
3436



courteous or not to be performing services in the manner required by the Agreement, the Contractor shall take all appropriate corrective measures.

#### **Provision of Field Supervision**

Contractor shall designate one qualified employee as supervisor of field operations. The field supervisor shall devote whatever time is necessary, but not less than 50 percent of his/her time in the field checking on Collection operations, including responding to complaints.

#### **General Supervision**

The Collection Services are under the general supervision of the City Representative, and the Contractor shall promptly comply with any City orders, directions and instructions that are consistent with the terms of this Agreement. The City reserves the right to inspect any and all of the Contractor's equipment at any time without prior notice.

### **9. Recyclable Materials and Green Waste and Food Waste Processing and Marketing**

#### **General Operations and Maintenance Standards**

Beginning on the Signature Date, the Contractor covenants to comply with the Contractor's performance obligations throughout the term of the Agreement and to perform the Contractor's performance obligations with respect to Recyclable Materials and Green Waste and Food Waste processing and marketing services in accordance with accepted practice for comparable processing facilities, sound management and operations practice, the facility's operation and maintenance manual, plans and specifications, permits, applicable law (including OSHA standards), provisions hereof, and covenants, conditions and restrictions pertaining to the site.

The Contractor shall be responsible for maintaining and renewing all necessary permits, licenses, and clearances necessary to provide the transportation and processing of Recyclable Materials and Green Waste. The Contractor shall maintain and renew permits; provided, however, the Contractor shall not be responsible for any delays in maintaining or renewing, or failure to maintain or renew, the permits, if the Contractor has exercised due diligence in maintaining and/or renewing the permits, and such failure is caused by any action or inaction of the issuing or renewing authority.

The Contractor shall meet all applicable regulations, industrial codes, and all applicable standards of technical societies, either as stated or as in standard industry practice.

The Contractor shall have the responsibility for the sale of recovered materials and collection of payment thereof.

#### **Maintenance and Repair**

The Contractor shall maintain the facility and site in good working order and repair, including maintaining spare parts inventory and performing periodic maintenance in accordance with the operations and maintenance manual, manufacturer's recommendations, accepted practice for comparable facilities, and sound management and operations practice. The Contractor shall maintain the aesthetic appearance of the facility and site in a clean and neat manner in accordance with the plans and specifications, with due regard for reasonable control of odors, dust, and noise.

3484 **Safety**

3485 The Contractor shall conduct facility operations in a safe manner, in accordance with applicable  
3486 law, requirements of insurance carried, and standard industry practices in the waste  
3487 management, composting, organics handling, and materials recovery industry.  
3488

3489 **Right to Enter and Inspect Facility**

3490 The City and its designated representative shall have the right, but not the obligation to enter,  
3491 observe, and inspect the processing facility during the receiving hours; meet with the facility  
3492 manager or his or her representative at any time, and meet with other employees upon request,  
3493 which request shall not be unreasonably denied. Upon City request, Contractor shall make  
3494 personnel available to accompany City employees on inspections. Contractor shall ensure that  
3495 its employees cooperate with the City and respond to the City's reasonable inquiries. The  
3496 Contractor shall make operational and business records other than financial records available  
3497 to the City during regular business hours upon City request.  
3498

3499 **Tours of Facility**

3500 Upon 24 hours request of the City, the Contractor shall provide tours of the facility. Such tours  
3501 shall not unreasonably disrupt facility operation. The Contractor shall not be required to conduct  
3502 such tours more frequently than once per week; provided that tours may be required once per  
3503 day during the first year of operation, by appointment. The City shall not be charged for labor,  
3504 overhead, overtime, or any other costs associated with such tours. As part of such tours, the  
3505 Contractor shall prepare (subject to the City's approval of text and format) and shall distribute  
3506 an educational brochure, printed on recycled paper, on conservation, Recycling, composting,  
3507 and general Solid Waste management programs. All persons on such tours will comply with all  
3508 policies and procedures of the Contractor when on the Contractor's premises.  
3509

3510 **Personnel**

3511 The Contractor shall engage and train qualified and competent employees, including  
3512 managerial, supervisory, clerical, maintenance, and operating personnel, in numbers necessary  
3513 and sufficient for facility operations and to perform the Contractor's obligation under this  
3514 Agreement. The Contractor shall train such staff to perform their work in a safe and efficient  
3515 manner in accordance with the health and safety plan in the facility's operations and  
3516 maintenance manual.  
3517

3518 **Recovery Standards**

3519 The Contractor shall use reasonable business efforts to maximize the recovery of delivered  
3520 materials in a manner acceptable to receive Diversion credit under AB 939.  
3521

3522 **Finished Product Standard**

3523 The processed Recyclables and/or the finished product shall maintain physical and chemical  
3524 specifications such as to: (a) achieve the results required under the marketing plan; and (b)  
3525 comply with all applicable laws, ordinances, regulations, and permit conditions.  
3526

3527 **Transportation of Residue**

3528 The Contractor shall transport and deliver all Residue to a disposal facility after its delivery to  
3529 the facility within the timeframes required by the facility's permits and in no event longer than  
3530 required by Applicable Law. The Contractor shall select routes from the facility to the disposal  
3531 facility which minimize inconvenience and disturbance to the public and comply with permits  
3532 and applicable law. The Contractor shall enclose or cover all vehicles transferring Residue from  
3533 the facility to prevent spillage.

**Weighing**

The Contractor shall develop and manage a system of weighing materials received from Collection vehicles and tracking recovery of incoming materials and disposition of Residue. The Contractor shall record tonnages of material received. At a minimum, the recorded data must indicate for each delivery, hauler's name, truck number if applicable, time of delivery, tonnage delivered, vehicle license number, and person receiving the delivery.

The Contractor shall install and maintain state-certified motor vehicles scales in accordance with applicable law.

**Substitute Scales**

To the extent that all the scales are inoperable, being tested, or otherwise unavailable, the Contractor shall substitute portable scales until the permanent scales are replaced or repaired. The Contractor shall arrange for the scale to be repaired or temporarily substitute scales to be used as soon as possible, and in any event, within 48 hours after failure of the permanent scales.

**Estimating Volumes**

Pending substitution of portable scales, the Contractor shall estimate the quantity of materials being delivered to the processing facility and residue and recovered materials being transported from the processing facility, on the basis of delivery truck and transfer trailer volumes, tare weight, broker's weigh records, and data obtained through historical information from the processing facility and purchasers of recovered materials using a methodology acceptable to the City. These estimates shall take the place of actual weighing and shall be the basis for records while scales are inoperable.

**Testing of Scales**

The Contractor shall test and calibrate all scales in accordance with applicable law, but at least every twelve months. Prior to any test, it shall provide at least five days notice thereof to the City. Upon City request, it shall provide the City with copies of the test results.

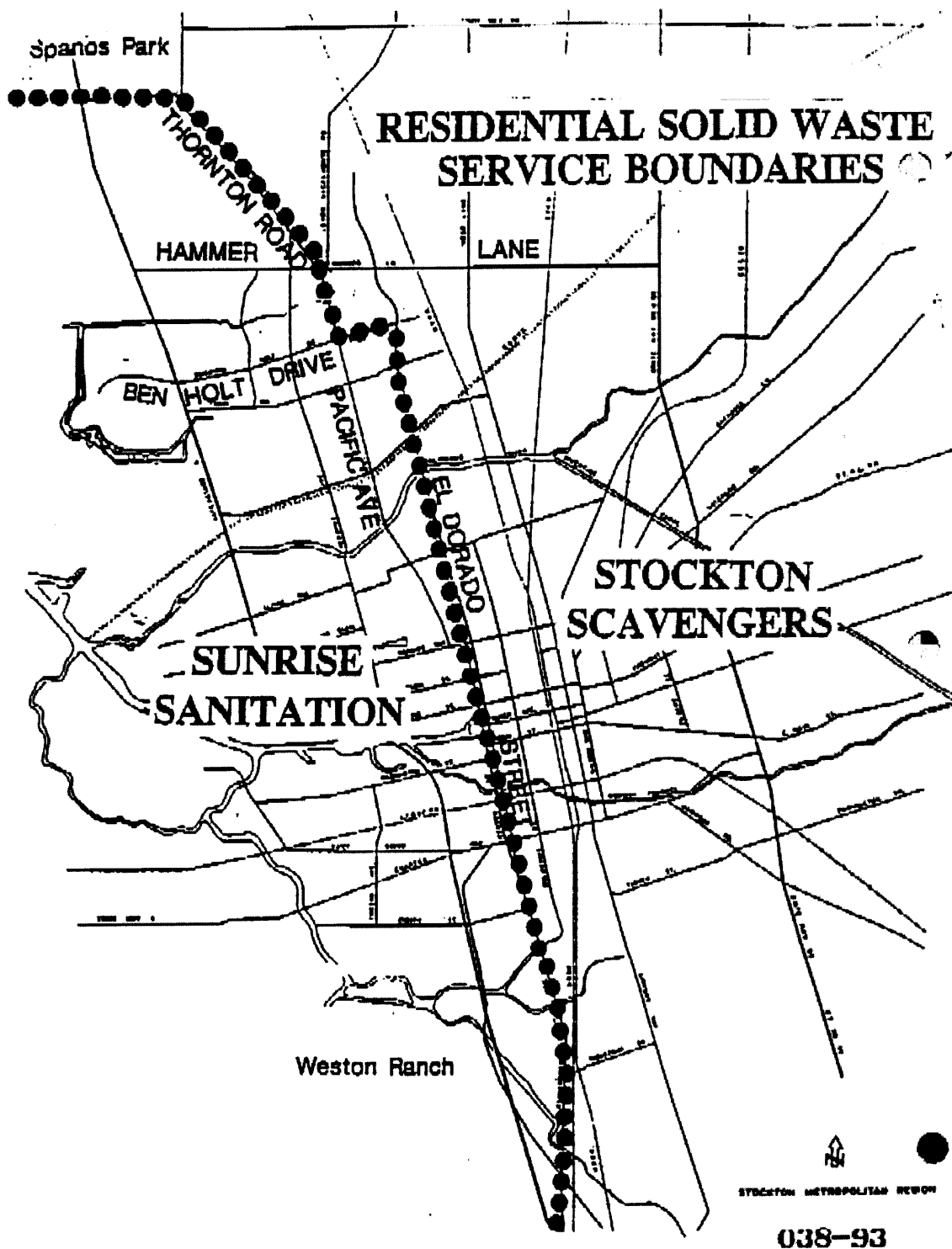
**Processing Equipment**

The Contractor shall provide processing equipment in number and capacity to efficiently perform the work required by the Agreement. The Contractor agrees to maintain each piece of equipment used by it in the performance of this Agreement in good order and repair. The Contractor shall have available sufficient backup equipment to respond to mechanical failures or other difficulties.

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EXHIBIT C  
COLLECTION SERVICES AREA



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## EXHIBIT D DIVERSION PLAN

- **Overview**

Stockton Scavenger Association (SSA), a Waste Management Company (WM), has responded with pricing for the requested service levels for curbside residential waste and recycling, green waste, commercial waste, commercial recycling, street sweeping and leaf collection services in accordance with the City's RFP. The proposed pricing and suggested programs are designed to meet the state-mandated AB 939 recycling requirements for materials collected by SSA.

The centerpiece of any collection program is the ability to maximize recycling by separating the recyclable material out of the waste stream and assuring markets for the separated materials. Waste Management has a state-of-the-art materials recovery facility (MRF) and waste transfer station in the City of Lodi. This facility is designed and permitted to recover single-stream residential and commercial materials. The MRF uses the latest technology, the Bollegraaf Single-Stream System, installed in 2001, and has the capability of processing 576 tons per day of co-mingled recyclable material. Since this facility is also permitted as a transfer station, it offers additional flexibility to transfer material to other facilities, if appropriate. In addition to separating the material from the waste stream, SSA has the ability to leverage its relationship with its sister company, Recycle America Alliance, to assure markets for the recovered materials.

- **Education**

A critical element to the success of any recycling program is a strong and effective educational program. If this program is not properly developed, participation in the required residential and commercial programs will not be successful. SSA has proposed a significant education program which includes literature and brochures, speakers for civic and community events, public event promotions, teacher education programs, tours of the Lodi MRF facility and school classroom programs (Exhibit E).

- **Commercial Collection and Recycling Programs**

Single-stream recycling services will be offered to the SSA's commercial customers at no additional cost. Sales consultants will continue to conduct waste stream audits, identifying source-separated materials and implement appropriate programs at the businesses serviced. This will allow SSA to tailor commercial carts (35, 64, and 96 gallon) and various bins sizes (2 and 4 cubic yards) to meet each business's recycling needs. The material collected will be transported to the Lodi MRF for processing.

SSA has also received a use permit for a 750-ton per day construction and demolition debris MRF/Transfer facility to be built in Stockton. The MRF will utilize an elevated sorting line. This facility will be open to the public seven days a week, providing residences with a local and convenient recycling alternative to the landfill. This facility will compliment the residential and commercial capabilities provided by the Lodi MRF. In the interim until this project is completed, SSA will continue to utilize East Stockton Transfer Station to sort and recycle these loads.

### **Three Cart Collection and Recycling Program**

The three-cart collection system is available to residential, multi-dwelling and small commercial customers. The collection and recycling program allows the customer to utilize a three-cart system, one cart each for - garbage, single-stream recycling and green waste.

The collection rates give the customer the incentive to "downsize" their garbage cart size and maximize their recycling participation. Customers may select a 35, 64 or 96-gallon automated cart for garbage with the smallest container being the least expensive. This program rewards the customer for recycling and financially penalizes the customer for not recycling.

### **Curbside Single-Stream Collection**

Each customer, as part of the base service, will be provided with a 64-gallon single-stream-recycling cart, collected weekly. The SSA education program will encourage the customer to recycle the items listed in the negotiation package dated March 2003 pages 2 & 3. Customers will have the option, based on their level of recycling, to request a smaller 35-gallon cart, or a larger 96-gallon container.

### **Green Waste**

The new program shifts the practice of placing green waste in the street to placing green waste in a 96-gallon cart. This helps to address the City's storm water concerns and improves the appearance of the Community. The customers that generate larger quantities of green waste may request additional containers at no additional charge. This material will be recycled at Sierra Organics, located at 9999-1 S. Austin Road in Manteca.

As a further safety net, Waste Management has the necessary equipment and experience to grind green waste at its Lodi facility. It is not anticipated that this capability will be used other than as a back up system, guaranteeing performance in the event local Stockton facilities are no longer available or cost prohibitive.

### **Leaf Collection**

Leaf season as defined by the City's RFP is from October 1 through December 31. During this period, leaf collection will be done with articulated loaders with a "claw" bucket. The leaves will then be feed into rear loading garbage trucks and transported to Sierra Organics to be recycled. Leaf collection will be coordinated with bi-weekly street sweeping.

### **Summary**

We believe the City of Stockton has requested and SSA has responded to a comprehensive waste and recycling program for the City of Stockton. This program will achieve the required RFP diversion for the waste stream handled by SSA and mandated by AB 939.



**EXHIBIT E**  
**PUBLIC EDUCATION PLAN**

The Contractor shall provide Customer information and public education through, but not limited to, the following programs:

- **Quarterly Newsletter**

The Contractor shall develop a quarterly newsletter to be distributed to all Customers either through billing inserts, electronically on the City's website or other mutually agreed upon means. The topics covered in the newsletter may include ideas and facts about Recycling services, source reduction of trash, composting or other related issues. Information about annual clean-up programs and Christmas tree Collection could be published in the newsletter. Notices of special events such as "Earth Day" observances and related educational programs available in the community can also be included. (Please see Example 1 of a Newsletter)

- **Program Implementation Information**

The Contractor, in cooperation with the City or a City representative, shall design, print and distribute a "Start-up" kit for the implementation of the three-cart service. Information regarding the use and location of the carts, acceptable and unacceptable items for recycling and green waste collection, and any other pertinent data shall be included in the packet. For the benefit of disabled and frail elderly who may not be able to physically handle their carts, information on how to apply for side yard service will be included in the packet. This packet and necessary updates throughout the Term of the Agreement could also be used to welcome new Customers when they are added to the Customer base. The Contractor will place notices in local newspapers regarding the implementation of the changes in service.

Should the City decide to implement the Food Waste Collection program, specifications detailing acceptable and unacceptable items for this program could be included in the "Start-Up" kit or distributed at the time the program is started. The quarterly newsletter would be another means for presenting this information to the customers.

The budget for informational and educational materials is to be mutually agreed upon by both the Contractor and the City.

- **Customer Reminder Notices**

To help Customers with any service issues, the Contractor shall use reminder tags left on the carts on the day of service. These tags can be used to educate the Customer about times for Collection, acceptable and unacceptable items, placement of Carts, or blockage of Carts for safe Collection. (Please see Example 2 of Customer Reminder Notices)

- **Special Collections**

Prior to special Collections such as annual clean-up programs and Christmas tree Collection, the Contractor shall notify Customers through distributed notices or hang-tags left on Carts, local media, electronically through the City's website and the quarterly newsletter. (Please see Example 3 of a Clean Up Notice)

3717                   •   **Speakers for Civic and Community Groups**  
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3719   The Contractor shall provide an outreach program to community groups and organizations such  
3720   as Kiwanis, Rotary, Lions, City Groups and the like in an effort to inform and educate members  
3721   about Solid Waste issues and Recycling programs available to businesses and the public  
3722   sector alike. The Contractor shall provide, at contractor's cost, the speakers for events on  
3723   mutually agreed upon dates.  
3724

3725   The Contractor shall also provide personnel who can upon request visit multi-family dwellings,  
3726   commercial businesses and City facilities to discuss Recycling programs.  
3727

3728                   •   **Literature and Brochures**  
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3730   The Contractor will work in conjunction with the City or the City's representative to develop as  
3731   needed brochures and informational material for residential, multi-family and commercial  
3732   Customers on Recycling and other related services. The cost for these materials will be funded  
3733   by the Contractor and/or in coordination with the City with any available grant monies. The  
3734   budget for these materials is to be mutually agreed upon by both the Contractor and the City.  
3735   (Please see Example 4 of brochures)  
3736

3737   **Information and Promotion of Recycling at Public Events**  
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3739   The Contractor will be available to provide information through literature and displays at public  
3740   events such as Earth Day, State of the City and the like. The events are to be mutually agreed  
3741   upon by the Contractor and the City.  
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3743                   •   **Education in Schools**  
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3745   The Contractor shall develop and make available, a training program for classroom teachers on  
3746   recycling and related issues. A teacher's guide with suggested classroom activities and  
3747   classroom materials may be included in the program.  
3748

3749   Annually the Contractor will contact schools within the service area and provide information on  
3750   scheduling in-classroom presentations on Recycling. Upon request from the school, the  
3751   Contractor will provide an educator to present these lessons. The Contractor will provide any  
3752   materials needed for these presentations. The lessons and materials will be appropriate for the  
3753   grade level. (Please see Example 5 of activity used in a Fourth Grade presentation)  
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3755   The Contractor will have an educator or appropriate personnel available to put on assemblies,  
3756   speak or provide other informational exhibits to schools when requested.  
3757

3758                   •   **Tours of Waste Management's Materials Recovery Facility**  
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3760   The Contractor can provide scheduled tours at the Waste Management's Materials Recovery  
3761   Facility in Lodi, California. Tours are appropriate for pre-school through adult groups. Through  
3762   large observation windows, visitors can view recyclable materials being sorted, baled and  
3763   shipped to factories as raw materials for new useful items. Discussion of safety around large  
3764   trucks and equipment is included especially for pre-school and elementary school visitors.

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# **EXHIBIT F** **CITY BUILDINGS TO BE SERVICED BY CONTRACTOR**

All data provided by the City is for the purpose of assisting Contractor in understanding its obligations under this Agreement, but is not represented to be complete and accurate. Contractor is required to provide Collection Services to all City buildings and facilities at no additional charge or compensation.

The City expects the Contractor to provide the system that best meets the City's goals of maximizing Diversion. Following is a list of current services as of June 2000. In addition to the service levels listed here, the Contractor must provide Recycling and Green Waste and Food Waste services where appropriate. The Contractor shall provide services based on, but not limited to the following list of City facilities:

## **REFUSE CONTAINERS**

<u>LOCATION</u>	<u>UNIT</u>	<u>BOX CAPACITY</u>	<u>PICK-UPS PER WEEK</u>
<b><u>PARKS AND RECREATION</u></b>			
LOUIS PARK (MT. DIABLO & OCCIDENTAL)	1	20 YD. W/ COVER	AS REQUESTED
STRIBLEY PARK (HAZELTON & "B" STREET)	1	20 YD. W/ COVER	AS REQUESTED
OAK PARK (FULTON & ALVARADO)	1	20 YD. W/ COVER	AS REQUESTED
SWENSON GOLF COURSE (HOUSTON AVENUE)	1	20 YD. W/ COVER	AS REQUESTED
ANDERSON PARK (N. EL DORADO & BEN HOLT)	1	20 YD. W/ COVER	1
<b><u>BIN CAPACITY</u></b>			
VAN BUSKIRK CENTER (HOUSTON & MANTHEY)	1	4 YD.	1
VICTORY PARK (PERSHING & ACACIA)	2	7 YD.	AS REQUESTED
LEGION PARK (BAKER & BEDFORD)	1	7 YD.	1
GRUPE PARK (14 MILE & CUMBERLAND)	1	7 YD.	1
DENTONI PARK (DAVIS & PRINCESS)	1	4 YD.	1
PANELLA PARK (LORRAINE & WINSLOW)	1	7 YD.	1
STUART GIBBONS PARK (W. HAMMER & ALEXANDRIA)	1	4 YD.	1
SANDMAN PARK (DON AVENUE & WAUDMAN)	1	7 YD.	1

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**REFUSE CONTAINERS (CONT.)**

<u>LOCATION</u>	<u>UNIT</u>	<u>BOX CAPACITY</u>	<u>PICK-UPS PER WEEK</u>
MCKINLEY PARK (S. EL DORADO & 8 <sup>TH</sup> ST.)	1	20 YD. W. COVER	AS REQUESTED
BUCKLEY COVE (BROOKSIDE ROAD)	1	7 YD.	1
MCKINLEY PARK CENTER (474 E. 9 <sup>TH</sup> ST.)	1	2 YD.	1
SEIFERT CENTER (128 W. BENJAMIN HOLT)	1	4 YD.	1
OAK PARK ICE ARENA (3845 ALVARADO ST.)	1	3 YD.	1
CIVIC AUDITORIUM (525 N. CENTER)	1 2	5 YD. 7 YD.	1 1
<b>PUBLIC WORKS</b>		<b>BOX CAPACITY</b>	
MSC (GARAGE) (1465 S. LINCOLN ST.)	1	20 YD.	1
		<b>BOX/BIN CAPACITY</b>	
	1	20 YD.	AS REQUESTED
CORPORATION YARD (1465 S. LINCOLN ST.)	1 2 3	7 YD. 4 YD. 54 GAL. TOTE	1 1 AS REQUESTED

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<b>CITY HALL</b> (425 N. EL DORADO ST.)	1	5 YD.	5
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**REFUSE CONTAINERS (CONT.)**

<b><u>LOCATION</u></b>	<b><u>UNIT</u></b>	<b><u>BOX CAPACITY</u></b>	<b><u>PICK-UPS PER WEEK</u></b>
COMPANY # 11 (1211 E. SWAIN RD)	1	3 YD	1
COMPANY # 12 (4010 E. MAIN STREET)	1	90 GAL. CAN	1
	1	40 GAL. CAN	1
COMPANY # 14 (3019 HAVENWEEP)	2	90 GAL. CAN	1
<b><u>LIBRARY</u></b>		<b><u>BIN CAPACITY</u></b>	
CESAR CHAVEZ CENTRAL LIBRARY (605 N. EL DORADO ST)	1	5 YD. W/ COVER & LOCK	2
FAIR OAKS BRANCH LIBRARY (2370 E. MAIN)	1	3 YD. W/ COVER & LOCK	1
<b><u>POLICE DEPARTMENT</u></b>		<b><u>BIN CAPACITY</u></b>	
PISTOL RANGE (3040 NAVY DRIVE)	1	4 YD.	1
POLICE FACILITY (22 E. MARKET ST.)	1	4 YD	6
	1	4 YD	1
S.E. FACILITY (1209 E. EIGHTH ST.)	1	90 GAL. CAN	1
ANIMAL CONTROL (1575 S. LINCOLN ST.)	1	4 YD.	2
POLICE ANNEX (224 N. EL DORADO ST.)	1	4 YD.	3
<b><u>FIRE DEPARTMENT</u></b>		<b><u>BIN CAPACITY</u></b>	
COMPANY #1 (1818 FRESNO	3	90 GAL. CAN	1
COMPANY # 2 (110 W. SONORA ST)	2	4 YD.	1
	1	64 GAL. CAN	AS REQUESTED
COMPANY # 3 (PILGRIM & FIRST ST.)	1	3 YD.	1
COMPANY # 4 BURKE AT DELTA COLLEGE	1	2 YD.	1
COMPANY #5 (3499 MANTHEY RD.)	2	90 GAL. CAN	1
COMPANY #6 (PICARDY DR)	2	90 GAL. CAN	1
COMPANY # 7 HAMMER LN. @ GIBBONS PK	2	90 GAL. CAN	1
COMPANY # 9 (HARDING & CALIFORNIA)	2	90 GAL. CAN	1
COMPANY # 10 (2903 W. MARCH LANE)	2	90 GAL. CAN	1

<u>LOCATION</u>	<u>UNIT</u>	<u>BOX CAPACITY</u>	<u>PICK-UPS PER WEEK</u>
COMPANY # 11 (1211 E. SWAIN RD)	1	3 YD	1
MARGARET K. TROKE BRANCH LIBRARY (507 W. BENJAMIN HOLT)	1	3 YD. W/ COVER & LOCK	1
MAYA ANGELOU BRANCH LIBRARY (2324 POCK LANE)	1	5 YD. W/ COVER & LOCK	1
TRAINING CENTER (148 E. MINER)	1	4 YD.	3

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# RECYCLING CONTAINERS

<u>LOCATION</u>	<u>UNIT</u>	<u>BOX CAPACITY</u>	<u>PICK-UPS PER WEEK</u>
CIVIC AUDITORIUM	1	4 YD. BIN (CARDBOARD)	AS REQUESTED
MSC (CORP YARD)	5	65 GALLON (PAPER)	1
CITY HALL	6	65 GALLON (PAPER)	1
	1	4 YD. (CARDBOARD)	2
ANNEX (CENTER & LINDSAY)	1	65 GALLON (PAPER)	1
PERMIT CENTER (EL DORADO & LINDSAY)	1	65 GALLON (PAPER)	1
POLICE DEPARTMENT	5	65 GALLON (PAPER)	1
POLICE ANNEX	2	65 GALLON (PAPER)	1
LIBRARY (MAIN)	1	4 YD. (CARDBOARD)	AS REQUESTED
	4	65 GALLON (PAPER)	1
FAIR OAKS	2	65 GALLON (PAPER)	1
TROKE	2	65 GALLON (PAPER)	1
MUD	4	65 GALLON (PAPER)	1
WELLS FARGO BLDG. (305 N. EL DORADO)	2	65 GALLON (PAPER)	1
COMPANY # 2	1	4 YD. (CARDBOARD)	AS REQUESTED





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**EXHIBIT G**  
**CITY SPECIAL EVENTS TO BE SERVICED BY CONTRACTOR**

The City expects the Contractor to provide the system that best meets the City's goals of maximizing Diversion. In addition to the service levels listed here, the Contractor must provide Recycling and Green Waste services where appropriate.

<b><u>Special Events</u></b>	<b><u>Date</u></b>	<b><u>Collection Service Levels</u></b>	<b><u>Port-O-Let Service Levels</u></b>
<b>Earth Day</b>	April, one Sat or Sun	One 20 Yard Bin	6 Port-O-Lets
<b>WaterFest</b> <i>Festival at Weber Point &amp; Parade in downtown Stockton</i>	July 4th	Two 20 Yard Bins	30 Port-O-Lets
<b>Festival of Lights</b>	1 <sup>st</sup> Saturday in December	One 20 Yard Bin	12 Port-O-Lets
<b>First Night Stockton</b>	December 31st	One 20 Yard Bin	12 Port-O-Lets
<b>Mayor's Kids Day</b>	1 <sup>st</sup> Sunday in August	One 10 Yard Bin	3 Port-O-Lets

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**EXHIBIT H**  
**STREET SWEEPING AND SEASONAL LEAF COLLECTION**

**A. Street Sweeping**

**1. General**

Contractor is responsible for provision of all equipment, materials, supplies and labor necessary to provide the service.

**2. Service Requirements**

Contractor is to provide street sweeping services as described in Article 4, and as provided in this Exhibit H. The Contractor will provide street-sweeping service on all current and future public streets with or without curbs, including medians, as well as designated City owned parking lots. Streets, collector and arterial streets shall be swept bi-weekly (every other week). Current and future streets and parking lots in the downtown area shall be swept three times per week. The Contractor shall provide on-call street sweeping for up to fourteen (14) municipal events per year (four special events, five (5) neighborhood cleanups and five (5) community cleanups). The Disposal of Solid Waste Collected by the street-sweeping vehicles is the responsibility of the Contractor. The Contractor will transport the material to the Designated Disposal or Transfer Facility. All costs of providing street sweeping service, including Disposal will be borne by the Contractor and shall be included in the rates.

The Contractor's street sweeping schedule is subject to review by the City, and the Contractor shall make all reasonable efforts to accommodate any requested changes. The City reserves the right to change the required frequency of street sweeping for some or all City streets.

**3. Other Services**

Contractor shall also provide other street sweeping- related services as follows:

1. Street sweeping following Special Events as specified in Article 4.12 and community cleanup events as specified Article 4.13.
2. After hours emergency clean up as needed. The City will be provided with an emergency street sweeping list of the Contractor's sweeping supervisors' and drivers' names, pager numbers, and phone numbers, along with instructions for any emergency sweeping that may be needed, such as after traffic accidents or weather-related emergencies.
3. Additional street sweeping services required by the City shall be provided at an hourly Rate of ninety dollars (\$90) per hour.

**4. Performance Standards**

1. Penalties - It is of mutual agreement that timely and complete performance of all aspects of this contract is of extreme importance to both parties. By entering into this contract and upon commencement of the performance of all work called for in these specifications, the Contractor agrees to the following penalties as being acceptable and agrees that if the City chooses to impose these penalties the Contractor will remit said penalties within 15 days.

- 3845 a. Call backs - If the Contractor has two or more callbacks for  
3846 substandard performance within a 30 day period the City may impose a  
3847 \$250 penalty for each callback after the second.  
3848 b. Failure to report action taken on complaints within 3 working days may  
3849 result in a \$250 penalty.  
3850 c. Additional liquidated damages as provided in Exhibit J.  
3851
- 3852 2. Time of Completion/Working Days - Time is of the essence in the fulfillment of  
3853 this contract. The Contractor is solely responsible for providing for completion of  
3854 all work on schedule.  
3855
- 3856 3. Monthly and Annual Reports - Contractor shall provide monthly reports and  
3857 year-end reports to the City showing yards, tons, and mileage by route. These  
3858 reports shall be in a format approved by the City that will assist the City in  
3859 preparing its annual Storm Water Report to the State of California.  
3860
- 3861 4. Refuse - The Contractor shall remove all deposits of dirt, rock, glass, cans,  
3862 weeds, sticks, papers or any like materials so designated by the City  
3863 Representative within the areas designated by this Contract, of a size that can  
3864 be practically removed by machine or ordinary hand sweeping operations.  
3865
- 3866 5. Schedule of Work - The Contractor's work schedule shall be submitted to the  
3867 City Representative for approval within 15 days of acceptance of this contract.  
3868 The schedule shall fully address coordination with collection services as  
3869 specified in Article 4.5A.  
3870
- 3871 6. Quality of Work - Standards of performance which the Contractor is obligated to  
3872 perform hereunder are those standards deemed to be good street sweeping  
3873 practices and which are subject to approval by the City Representative.  
3874
- 3875 7. Hours of Sweeping - Scheduled street sweeping shall be performed only during  
3876 the hours between 4:00 a.m. and 5:00 p.m. With reasonable notice (48 hours)  
3877 the City Representative shall have the authority to change the hours of sweeping  
3878 to meet the needs of the City.  
3879
- 3880 8. Equipment - Equipment not suitable to produce the quality of work required shall  
3881 not be permitted to operate on the contracted work. All equipment, at the sole  
3882 discretion of the City will be subject to the City Representative's approval prior to  
3883 use. All sweeping equipment shall have proper safety markings, in accordance  
3884 with State Vehicle code and approved by the City Representative. Use of a steel  
3885 plate on the sweeper wheel to prevent tire scuffing against the curb will not be  
3886 permitted.  
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- 3888 9. Dust Control - At all times the proper volume of water will be applied by the  
3889 sweeper to control dust during sweeping.  
3890
- 3891 10. Sound Control - The noise level from the Contractor's operation will not exceed  
3892 the City's noise standards. Each internal combustion engine used for any  
3893 purpose on the job or related to the job shall be equipped with a muffler of a type

recommended by the manufacturer. No internal combustion engine shall be operated on the project without said muffler.

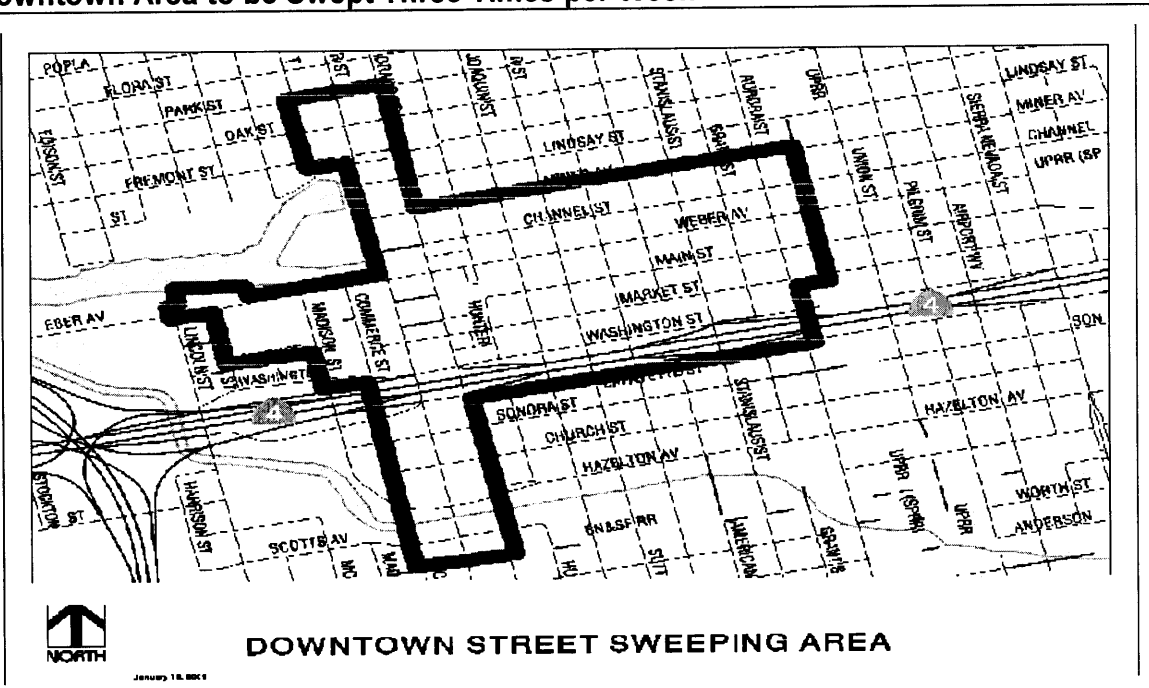
11. Traffic Counters - The Contractor is cautioned that at various times and locations the City may use traffic counters which utilize a hose placed in the roadway. The City will notify the Contractor at least 24 hours before installing a traffic counter. It is further understood that if the Contractor damages a traffic counter after receiving the 24 hour notice from the City Representative, the Contractor will be responsible for any and all damages caused by the Contractor to the counter.
12. Callbacks/Complaints - When in the opinion of the City Representative a section of street is inadequately swept, the Contractor shall, within 24 hours of notification (excluding weekends) re-sweep the section in question.
13. Storage of Equipment - Contractor shall provide for storage of all equipment necessary to fulfill this contract.
14. Speed of Vehicles - The Contractor shall at all times during sweeping operate the sweeper at no more than 5 miles per hour, unless it can be demonstrated to the City Representative that the specified quality of sweeping can be safely accomplished at a higher rate of speed.
15. Subcontracting - The Contractor shall not assign any part of this contract to a subcontractor without prior written approval by the City Representative.
16. Protection of Trees and Other Vegetation - The Contractor shall not deface, damage or remove any trees, shrubs or other vegetation without prior written approval by the City Representative. Contractor shall repair or restore to their original condition trees or other landscape features scarred or damaged by equipment or operations of the Contractor. The Contractor will obtain approval for repair and restoration from the City Representative prior to initiation of such work.
17. Hazardous or Toxic Materials - If the Contractor collects material from the streets of the City that is deemed to be hazardous or toxic by a certified testing firm or the landfill operator, the Contractor will be responsible for the safe and legal disposition of the material, including all associated costs. If the City is notified prior to sweeping of the material, the City shall be responsible for the safe and legal disposition of the material, including all associated costs.

## **B. SEASONAL LEAF COLLECTION**

Contractor will provide seasonal leaf collection collected loose on all public streets with or without curbs bi-weekly (every other week) from October 1 through December 31 of each year.

Contractor shall provide seasonal leaf collection at City parks and in City-owned parking lots bi-weekly (every other week) from October 1 through December 31 of each year. Contractor will notify City parks crews of the leaf collection schedule, so that leaf piles will be aggregated for collection.

3943 **Downtown Area to be Swept Three Times per Week**



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**EXHIBIT I  
SCHEDULE OF RATES**

**Residential Cart Collection  
for Single-Family, Duplex and Tri-Plex Customers  
Billed by City  
Rates in \$ per Customer per Month**

Service Description	Total Rate (\$ per customer per month)
30-gal solid waste container	\$18.99
60-gal solid waste container	\$23.99
90-gal solid waste container	\$28.99

**Senior (65 and older) Residential Cart Collection  
for Single-Family, Duplex and Tri-Plex Customers  
Billed by City  
Rates in \$ per Customer per Month**

Service Description	Total Rate (\$ per customer per month)
30-gal solid waste container	\$17.09
60-gal solid waste container	\$21.59
90-gal solid waste container	\$26.09

**Senior (65 and older and below median income)  
Residential Cart Collection  
for Single-Family, Duplex and Tri-Plex Customers  
Billed by City  
Rates in \$ per Customer per Month**

Service Description	Total Rate (\$ per customer per month)
30-gal solid waste container	\$15.19
60-gal solid waste container	\$19.19
90-gal solid waste container	\$23.19

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**Residential Cart Collection  
for Multi-Family Complexes with More than 3 Units and  
Mobile-Home Parks requesting Cart Service  
Billed by Contractor  
Rates in \$ per Customer per Month**

Service Description	Total Rate (\$ per customer per month)
30-gal solid waste container	\$19.19
60-gal solid waste container	\$24.19
90-gal solid waste container	\$29.19

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**Residential and Commercial Solid Waste Debris Box Service**

Size	Hauling Charge (Per Pull)	Disposal Charge (Per Ton)
20yd	\$175.00	\$46.00
30 yd	\$175.00	\$46.00
40 yd	\$175.00	\$46.00

**Residential and Commercial Solid Waste Compactor Service**

Size	Hauling Charge (Per Pull)	Disposal Charge (Per Ton)	Compactor Rental Charge (Per Month)
20yd	\$185.00	\$46.00	\$350.00
30 yd	\$185.00	\$46.00	\$350.00
40 yd	\$185.00	\$46.00	\$350.00



**Commercial Cart and Bin Collection  
Rates in \$ per Container per Month**

Service Description	Total Rate (\$ per customer per month)
30-gal container	\$30.50
60-gal container	\$35.50
90-gal container, 1 pickup / wk	\$40.50
90-gal container, 2 pickups / wk	\$65.50
90-gal container, 3 pickups / wk	\$90.50
90-gal container, 4 pickups / wk	\$125.50
90-gal container, 5 pickups / wk	\$155.50
90-gal container, 6 pickups / wk	\$173.86
1 cu yd, 1 pickup / wk	\$81.43
1 cu yd, 2 pickups / wk	\$158.91
1 cu yd, 3 pickups / wk	\$234.68
1 cu yd, 4 pickups / wk	\$312.16
1 cu yd, 5 pickups / wk	\$387.93
1 cu yd, 6 pickups / wk	\$465.41
1.5 cu yd, 1 pickup / wk	\$109.50
1.5 cu yd, 2 pickups / wk	\$183.50
1.5 cu yd, 3 pickups / wk	\$222.50
1.5 cu yd, 4 pickups / wk	\$315.50
1.5 cu yd, 5 pickups / wk	\$389.50
1.5 cu yd, 6 pickups / wk	\$446.50
2 cu yd, 1 pickup / wk	\$117.59
2 cu yd, 2 pickups / wk	\$203.50
2 cu yd, 3 pickups / wk	\$274.50
2 cu yd, 4 pickups / wk	\$351.50
2 cu yd, 5 pickups / wk	\$433.50
2 cu yd, 6 pickups / wk	\$496.50
3 cu yd, 1 pickup / wk	\$143.50
3 cu yd, 2 pickups / wk	\$234.50
3 cu yd, 3 pickups / wk	\$325.50

Service Description	Total Rate
	(\$ per customer per month)
3 cu yd, 4 pickups / wk	\$420.50
3 cu yd, 5 pickups / wk	\$521.50
3 cu yd, 6 pickups / wk	\$581.50
4 cu yd, 1 pickup / wk	\$158.50
4 cu yd, 2 pickups / wk	\$285.50
4 cu yd, 3 pickups / wk	\$410.50
4 cu yd, 4 pickups / wk	\$532.50
4 cu yd, 5 pickups / wk	\$656.50
4 cu yd, 6 pickups / wk	\$699.50
5 cu yd, 1 pickup / wk	\$201.96
5 cu yd, 2 pickups / wk	\$386.21
5 cu yd, 3 pickups / wk	\$570.45
5 cu yd, 4 pickups / wk	\$754.69
5 cu yd, 5 pickups / wk	\$938.94
5 cu yd, 6 pickups / wk	\$1,123.18
6 cu yd, 1 pickup / wk	\$229.51
6 cu yd, 2 pickups / wk	\$441.31
6 cu yd, 3 pickups / wk	\$651.38
6 cu yd, 4 pickups / wk	\$861.50
6 cu yd, 5 pickups / wk	\$1,065.50
6 cu yd, 6 pickups / wk	\$1,150.50
7 cu yd, 1 pickup / wk	\$257.06
7 cu yd, 2 pickups / wk	\$496.41
7 cu yd, 3 pickups / wk	\$734.03
7 cu yd, 4 pickups / wk	\$971.65
7 cu yd, 5 pickups / wk	\$1,209.27
7 cu yd, 6 pickups / wk	\$1,448.62

**Special Services Rates**

Service Description	Rate
	(\$ per container pickup)
Extra pickup*:	\$ 17.03
30-gallon cart (on service day)	\$ 3.41
60-gallon cart (on service day)	\$ 6.81
90-gallon cart (on service day)	\$ 10.22
1 CY bin	\$ 44.00
1.5 CY bin	\$ 45.00
2 CY bin	\$ 52.00
3 CY bin	\$ 58.00
4 CY bin	\$ 65.00
5 CY bin	\$ 71.00
6 CY bin	\$ 78.00
7 CY bin	\$ 84.00
Backyard charge	\$ 8.00 per household per month
On-call bulky items pickup	\$ 15.00 per CY pickup
Key charges (1)	\$ 3.00 per container per month (5)
Enclosure charges (2)	\$ 4.00 per container per month (5)
Gate service charges (3)	\$ 5.00 per container per month (5)
Long walk charges (4)	\$ 8.00 per container per month (5)
Maximum charge (5)	\$ 20.00 per container per month (5)

\* Amount added to on service day charges for non service day pickup

#### Notes to Special Services

Key charges are allowed when container access requires the driver to carry a key and unlock a lock to empty the container. Key charges do not apply if a customer's lock is left in the unlocked position.

Enclosure charges are allowed when collection required removing a container from an enclosure and replacing it when emptied.

Gate service charges are allowed when collection requires opening a closed or locked gate in order to access a container.

Long walk charges are allowed when a container is placed further than 10 feet from where the collection vehicle has access.

Charges for key, enclosure, gate, and long walk service are not cumulative pickup charges. The contractor's rates for a customer requiring one or more of the four special services will be a maximum rate (as specified in the table above) as adjusted for CPI, per pickup for any combination of the four service categories.



**EXHIBIT J**  
**LIQUIDATED DAMAGES**

In the event that the Contractor fails to perform fully any of the Contractor's obligations under this Agreement (other than "events of Default" stipulated in Article 10.2) the Contractor shall be in breach ("event of Breach") of this Agreement. Upon delivery of written notice to the Contractor and as provided in Article 10.1.D, the City may impose the following Liquidated Damages upon the Contractor, in addition to any other available remedies the City may have. City may retain any Liquidated Damages due to City from the Monthly Remittance to the Contractor.

**Implementation of News Services**

- |  |
|--|
| 1. Failure to complete implementation in full of all new Collection Services enumerated in this Agreement by June 1, 2004: \$10,000 per day. |
|--|

**Provision of Service to Customers**

- |  |
|--|
| 1. Failure to commence service to a new Customer within seven (7) days of receiving order: \$100.00 per incident per day.  |
| 2. Failure to provide Carts, Bins, or other collection containers to Customer within three Working Days of the Customer's request for service: \$200.00 per incident per day.                |
| 3. For each occurrence over ten (10) per calendar year to replace emptied Containers upright, with lids in-place, and in their original location: \$100.00.                                  |
| 4. Failure to repair or replace any Cart, Bin, Debris Box, Compactor or other Collection Container, when so required by this Agreement within two (2) working days: \$100.00 per occurrence. |
| 5. Failure to correct a missed pickup within the required times set forth in Article 5.3C: \$100.00 per occurrence; each additional 24-hours working day period: \$100.00.                   |
| 6. Failure to tag materials not collected due to contamination or inappropriate setout: \$200.00 per occurrence.   |
| 7. Failure to respond to a Customer complaint as provided in Article 5.3: \$100.00 per day per incident.   |
| 8. Failure to record a response to a Customer complaint or request within 24 hours of resolution: \$100.00 per occurrence.   |
| 9. Failure to notify Customers of improper setouts: \$100 per incident.  |
| 10. Discourteous behavior by Contractor staff: \$300.00 per incident.  |
| 11. Failure to answer the telephone or answering machine during the Customer service hours specified in Article 5.2.B: \$200.00 per incident.  |
| 12. Additional penalty when Contractor receives more than 25 valid service-related complaints in any 30-day period: \$2,500.00.  |

3968 **City Services**

1. Failure to Collect Collection Materials, including through seasonal leaf collection from City Facilities as required by this Agreement and/or as otherwise arranged with City staff: \$300.00 per day per incident.
2. Failure to Collect Collection Materials from public Containers as required by this Agreement and/or as otherwise arranged with City staff: \$500.00 per day per incident.
3. Failure to maintain public Containers in clean and sanitary condition as required by this Agreement: \$500.00 per day per incident.
4. Failure to provide Collection and street sweeping services at Special Events pursuant to Article 4.12 and Exhibit G; and at Neighborhood Cleanups and Community Cleanups pursuant to Articles 4.6 and 4.13, respectively, and Exhibit H: \$1,000.00 per event.

3969

3970 **Contractor Operations**

1. Undertaking Collection operations during hours outside of allowable collection hours as specified in Article 3.3D: \$250.00 per verified complaint.
2. Failure to complete at least ninety-five (95) percent of a scheduled route on the regular scheduled route day: \$500.00 per uncompleted route.
3. Making changes to routes or route days affecting five (5) percent or more of Customers without notice to City or Customers as required in Exhibit B: \$100.00 per Customer per day.
4. Conducting street sweeping and Collection of Collection Materials on the same streets or portions of streets on the same day: \$500.00 per incident per day.
5. Failure to provide quality street sweeping services at the required frequency: \$500.00 per incident per day.
6. Failure to properly cover materials in Collection vehicles: \$300.00 per incident.
7. Failure to correct leakage of fluids from Collection vehicle upon notice from the City and prior to resuming use of the vehicle within the City: \$300.00 per incident.
8. Failure to clean up spillage or litter occurring during Collection: \$100.00 per occurrence.
9. Failure to have a vehicle properly licensed, registered and inspected: \$100.00 per incident.
10. Exceeding the weight limitations as set forth in the State of California Vehicle Code: \$1,000 per incident.
11. Failure to clean Collection vehicles once per week: \$100.00 per incident.
12. For each occurrence over five (5) per calendar year of excessive noise: \$300.00.
13. Failure to maintain properties, facilities, and equipment in clean, safe, and sanitary manner, upon notice by City: \$100.00 per day.
14. Failure to convert entire fleet (except light trucks and automobiles) to Low Emission Vehicles by June 1, 2009 as provided in Article 4.17, or to convert by such alternative dates(s) agreed to by the City pursuant to Article 4.17. : \$10,000.00 per day

3971 **Segregation and Delivery of Collection Materials**

1.	Failure to keep Solid Waste and Recyclable Materials segregated once Delivered for Collection by Customers, and without City approval: \$1,000 per incident.
2.	Failure to deliver collected Solid Waste to the Designated Transfer Station or Disposal Facility, and without City approval: \$1,000 per incident.
3.	Failure to deliver collected Green Waste and Food Waste to Green Waste Processing Facility, and without City approval: \$1,000 per incident.
4.	Delivery of Collected Recyclable Materials to a disposal facility, rather than to a Recycling Facility or delivery direct to market, and without City approval: \$1,000.00 per incident.

3972

3973 **Contractor Personnel and Liability**

1.	Failure to have a vehicle driver properly licensed: \$100.00 per incident.
2.	Failure to repair damage to Customer property or other private property caused by or resulting from actions of the Contractor or its personnel: \$100.00 per incident per location.

3974

3975 **Diversion Requirements**

1.	Failure to comply with a substantive requirement of the Diversion Plan contained in Exhibit D: \$500.00 per incident.
2.	Failure to comply with a substantive requirement of the Public Education Plan contained in Exhibit E: \$500.00 per incident.
3.	Beginning January 1, 2005, failure to achieve and maintain in each following calendar quarter Diversion of Collection Materials in the following percentages: 42 percent: \$6,250 per quarter 37 percent: \$12,500 per quarter 32 percent: \$25,000 per quarter [For example, if during the 1 <sup>st</sup> quarter of 2005, Contractor Diverts 31,000 tons of Collection Materials and Disposes of 69,000 tons of Collection Materials, the liquidated damages assessed by the City would be \$25,000. If the Contractor Diverts 45,000 tons of Collection Materials and Disposes of 55,000 tons, there would be no liquidated damage assessed.]
4.	Beginning January 1, 2005, failure to achieve and maintain in each following calendar quarter Diversion of all materials collected within the City by the Contractor in the following percentages: 50 percent: \$6,250 per quarter 45 percent: \$12,500 per quarter 40 percent: \$ 25,000 per quarter
5.	Failure to use Best Efforts to divert fifty (50) percent of materials collected through Neighborhood Cleanups and Bulky Items collection: \$500 per incident.

Liquidated Damages for failure to achieve and maintain the Diversion percentages specified in "Diversion Requirements" Items 3. and 4. above, shall be assessed by the City each calendar quarter. In addition:

Liquidated Damages shall be maintained in a segregated Recycling fund to be used by the City to promote Recycling programs.

The City shall not assess Liquidated Damages that exceed \$25,000 in any single calendar quarter. In the event that in any calendar quarter the City could assess Liquidated Damages under both "Diversion Requirement 3. and 4.", the City shall assess and the Contractor shall owe only the larger of the two separate amounts that otherwise would be due under the two requirements

If in any calendar year Contractor achieves 42 percent diversion of all Collection Materials collected that year, the City shall reimburse the Contractor for Liquidated Damages assessed in any previous quarter of that year pursuant to "Diversion Requirement" 3. above.

If in any calendar year Contractor achieves 50 percent diversion of all materials collected by the Contractor within the City that year, the City shall reimburse the Contractor for the Liquidated Damages assessed in any previous quarter of that year pursuant to "Diversion Requirement" 4. above.

- a. Any City-retained Liquidated Damages remaining in any calendar year shall be used by the City to offset any fines assessed by the State pursuant to Article 9.2 assessed within that calendar year.

#### **Payment and Reporting Requirements**

- |  |
|--|
| 1. Failure to remit Monthly Remittance to City by the twentieth (20th) of the month as required in Article 6.3: \$100.00 per occurrence plus late fees of three-quarters of one percent per month for every month thereafter until paid. |
| 2. Failure to maintain or submit documents and reports, including customer complaint logs as required under the terms of this Agreement after ten days notice: \$100.00 per incident per day.  |
| 3. Failure to maintain a customer complaint log, or fraudulent record keeping or fraudulent information provided by the Contractor with regard to customer complaint logging, tracking and resolution: \$10,000 per incident.            |

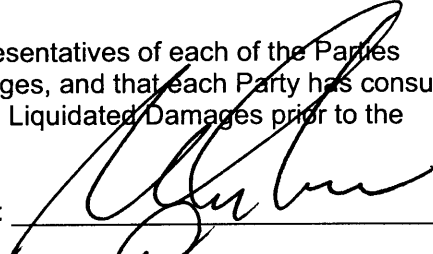
#### **All Other Contractor Obligations**


- |  |
|--|
| 1. Failure to provide customer service levels and route information to City staff upon request for City use related to resolution of customer service, customer billing or other related service issues: \$1,000 per occurrence. |
| 2. Failure to provide detailed route maps and full customer lists to City staff upon request to assist the City in negotiating or procuring future collection services: \$10,000 per occurrence.                                 |
| 3. Failure to perform any other requirements of the Agreement not specifically stated in this Exhibit J, and not corrected or in the process of correction within twenty-four (24) hours of notice from the City: \$200.00 each. |

Above amounts may be adjusted by the City on each June 1, beginning with June 1, 2005 to reflect changes in the Consumer Price Index for the preceding twelve (12) month period. In initialing this Exhibit J in the area provide below, representatives of each of the Parties confirms their understanding of each of the above damages, and that each Party has consulted

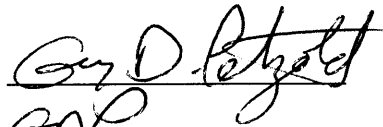


4025 In initialing this Exhibit J in the area provide below, representatives of each of the Parties  
4026 confirms their understanding of each of the above damages, and that each Party has consulted  
4027 legal counsel, and obtained adequate explanation of the Liquidated Damages prior to the  
4028 Signature Date.

4029  
4030 Contractor: USA Waste of California, Inc. City: 

4031 Initial Here:  Initial Here: 

4032  
4033 Approved as to form:

4034  
4035 Contractor legal counsel: Steven T. Seward City Attorney: 

4036 Initial Here: STS Initial Here: GO

4037  
4038  
4039

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4021  
4022  
4023  
4024

**EXHIBIT K**  
**INSTRUMENT FOR SECURING PERFORMANCE**

*Contractor's bond or other assurance of performance to be inserted here.*



4026  
4027  
4028  
4029

**EXHIBIT L**  
**INSURANCE CERTIFICATES**

*Contractor's insurance certificates to be inserted here.*



**EXHIBIT M**  
**IMPLEMENTATION AND CUSTOMER SERVICE PLAN**  
**STOCKTON SCAVENGER**  
**RESIDENTIAL SERVICE**

**January 15th, 2004** – The initial newsletter will be sent out to all residential customers, covering the following items. Subsequent mailing dates will be Quarterly on April 15<sup>th</sup>, 2004, July 15<sup>th</sup>, 2004 and October 15<sup>th</sup>, 2004, unless specified at a lesser frequency. The newsletter will be referenced in this document as “The Newsletter”.

The Newsletter will contain the following detailed explanations of the “new” and “expanded” features available to residential customers effective June 1, 2004:

**Weekly Curbside Trash Collection**—Included in the January 15<sup>th</sup>, 2004 Newsletter will be a “cart size selection mailer” allowing customers to see and understand the 30 gallon waste cart size, which will be provided unless customer responds, with an enclosed post card requesting a larger 60 or 90-gallon cart. A follow-up mailer will be sent in March to selected customers who have not responded.

**Single Stream Recycling**—Residential customers will be notified by the Newsletter of the recycling guidelines for weekly curbside collection of 60-gallon waste cart(s) for single stream recycling. There will be a listing of those items that can be placed in the single stream recycling waste cart.

**Used Motor Oil and Oil Filters**—Customers will be notified of the collection guidelines by the Newsletter. Collection to be at curb outside of 60-gallon recycling waste cart, customer to place used motor oil, at the curb on pickup day, in clear one-gallon plastic jug(s) with the lid taped shut. Oil filters are to be placed at the curb, outside of 60-gallon recycling waste cart, and are to be drained of excess oil and individually placed in sealed zip-lock bags.

**Green Waste and Food Waste**—Residential customers will be notified of the weekly curbside collection of 90-gallon waste cart(s) for green waste and food waste. Guidelines will be provided in the January 15<sup>th</sup> and April 15<sup>th</sup>, 2004 Newsletters.

**Cart Placement** – Instructional guidelines for the placement of carts for service will be communicated to all residential customers in the January 15<sup>th</sup>, 2004 and July 15<sup>th</sup>, 2004 Newsletter.

**Seasonal Leaf Collection**—A September Billing Insert and the October 15<sup>th</sup>, 2004 Newsletter will notify residential customers bi-weekly collection (every other week) during period of October 1 through December 31 of each year, contractor will collect loose leaves on all public streets with or without curbs as specified in section 4.5 B of the contract.

**Street Sweeping**—Residential customers will be notified by the Newsletter and Billing Inserts in May and December regarding bi-weekly (every other week) street sweeping,

which will be done the workday following customer's regularly scheduled collection day. The Newsletter and Billing Inserts will communicate information to the resident that their waste carts and vehicle(s) should be out of the street to ensure maximum sweeping results

**Free Neighborhood Cleanup**—The Newsletter as well as bill inserts will notify residential customers of the annual curbside collection, recycling and disposal for bulky items and up to six containers (30-gallon bags, boxes or bundles not exceeding 40 lbs. each) and five tires (no rims) and all other items included in Exhibit A.6. There will be five such neighborhood-collection events scheduled and advertised throughout the City.

**On-Call Bulky Item Pickup**—Customers will be notified via Newsletter up to 4 times January 15<sup>th</sup> 2004, April 15<sup>th</sup>, 2004, July 15<sup>th</sup>, 2004 and October 15<sup>th</sup>, 2004. On-call bulky item pickups, as requested by residents, will be performed for the special charges, as provided within the contract Exhibit I.

**Christmas Tree Collection**—Customers will be notified via the October 15<sup>th</sup>, 2004 Newsletter and the December billing insert that Christmas tree collection will be at the curb on the resident's regular collection day during the period of December 26 through January 15, and will be picked up at no charge as outlined in section 4.8 of the contract.

**Side Yard Service**—Customers will be notified twice January 15<sup>th</sup>, 2004 and July 15<sup>th</sup>, 2004 in the Newsletter that side yard service will be provided, at no charge to disabled or frail elderly customers that (1) are physically unable to move carts, as verified by a medical certificate and (2) "annually" sign a sworn statement that they live in a residence with no other resident capable of moving carts, as outlined in section 4.9 of the contract. Other customers will be provided this service at the rate set forth in Exhibit I for Backyard Charge.

**Senior and Below Median Income Rates**—Customers will be notified twice, January 15<sup>th</sup>, 2004 and July 15<sup>th</sup>, 2004 that a 10% discount, off of the standard rate, will be available to those one, two, and three family residential customers demonstrating that they have reached sixty-five years of age. They will also be notified that an additional 10% discount is available for those who meet the Below Median Income criterion.

**Collection Service Overages**—each residential customer will be eligible to receive twelve stickers for placement of collection materials in excess of customer's service level for collection on customer's regular service day, at no additional charge. These overages may be used for solid waste (trash), recycling or food and green waste.

**Holiday Schedule Notification** – Holiday schedule will be communicated to all residential customers via the Quarterly Newsletters

**Household Hazardous Waste** – Information regarding the San Joaquin drop off facility will be provided to residential customers, utilizing the Newsletter.

**Special Events** – All community special events as defined in exhibit G and section 4.12 of the contract will be advertised in the Quarterly newsletter.



**Violation Notification Cart Tags** - We plan to have our "Customer Reminder Tags" for the individual services—trash, recycling, food and green waste and used motor oil and oil filter collection, available in both English and Spanish prior to any distribution of waste carts and when we begin to make our community presentations.

## **Advertising and Community Outreach**

**Advertising** – Utilizing local media, Channel 97, as well as radio stations PSA's, advertising will occur on January 1<sup>st</sup>, 2004, February 1<sup>st</sup>, 2004, March 1<sup>st</sup>, 2004, April 1<sup>st</sup>, 2004 and May 1<sup>st</sup>, 2004.

**Press Releases** – Utilizing local media, Channel 97, PSA's and possibly The Stockton Record editorial section, educational / promotional releases will be made available January 15<sup>th</sup>, 2004, March 15<sup>th</sup>, 2004 and May 15<sup>th</sup>, 2004.

**Bill Inserts** – Will be co-coordinated with and through the City for the appropriate billing water company on the following billing dates February, May, September and December billing. Topics will range from operational issues or educational items such as diversion levels being obtained through the program. These inserts will allow the companies and the city to tailor information as needed.

**Collection Day Change Postcard** – Direct mailers will be utilized in March and May to notify any customers who may experience a collection day change pursuant to section 5.4 B. 1.

**Community Workshops** – These workshops will be designed to outline all aspects of the program including food wastes. Four (4) workshops will be held. One in March, April, May and June.

**School Programs** – Stockton Scavengers will promote recycling education through classrooms presentations and or fieldtrips to our Lodi Material Recovery Facility up to ten (10). These programs will begin in April and continue throughout the year as school districts schedules allow.

**Festival Attendance** – Beginning in January and continuing throughout the year, Stockton Scavengers will attend eight (8) Farmers Markets and other well attended community events.



4165 **IMPLEMENTATION AND CUSTOMER SERVICE PLAN**  
4166 **STOCKTON SCAVENGER**

4167  
4168 **MULTI-FAMILY**

4169  
4170 All Multifamily units of four or more will receive the Quarterly newsletter as described in  
4171 previous sections. Portions of the newsletters will be generic and other areas more specific to  
4172 various groups i.e. challenges faced by large multi-family complexes or commercial customers.  
4173 Other items specific to the multi-family will be as follows: (unless specifically noted frequency  
4174 will be quarterly).

4175  
4176 **Christmas Tree Collection** – Depending on the site and wishes of complex managers, 40 yd  
4177 debris boxes may be used to consolidate trees in a complex or trees may be separated from  
4178 the trash by leaving them near the recycling container location. Multi-family units will be notified  
4179 in the October 15<sup>th</sup>, 2004 newsletter and a mid December Cart Tag.

4180  
4181 **Holiday Schedule Notification** – Any changes to collection schedule caused by holidays will  
4182 be communicated by the newsletter.

4183  
4184 **Household Hazardous Waste** – Location and schedules for San Joaquin County drop off  
4185 facility and the proper handling / disposal of Household Hazardous wastes will be provided in  
4186 the newsletter.

4187  
4188 **Recycling Guidelines - Multifamily** customers will be notified of the acceptable materials  
4189 utilizing the newsletter.

4190  
4191 **On-Call Bulky Item Collection** – Customers will be notified via the newsletter of the On-Call  
4192 bulky item collection service as provided for in the contract Exhibits I. and A.9.

4193  
4194 **Neighborhood Clean-up** – Multifamily customers will be notified of their scheduled collection  
4195 day in the April 15<sup>th</sup>, 2004 newsletter and October 15<sup>th</sup>, 2004 newsletter.

4196  
4197 **Customer Service Information** – Provided in the newsletter Multifamily customers will be  
4198 given information on how to contact various Waste Management departments, from site  
4199 auditors who can tailor a multi family program to cut costs and increase diversion, to billing  
4200 representatives to answer questions on charges to Customer service reps to schedule that  
4201 extra pick-up. Access via the internet will also be provided to contact WM directly with all  
4202 inquiries being forwarded directly to the site management team.

4203  
4204 **Green / food waste recycling** – Guidelines for cart or bin placement for green and food waste  
4205 collection as well as materials acceptable will be provided in the April 15<sup>th</sup>, 2004 newsletter.

4206  
4207 **Street Sweeping** – Multi-family units will be notified by the newsletter and billing inserts in May  
4208 and December. Notifications will communicate to multi-family customers the day's of sweeping  
4209 activity in their area so bins, carts or vehicles are not left in the right of way to ensure maximum  
4210 sweeping results. (Multi-family customers may have multiple pick-up days thus providing  
4211 sweeping the day after service may not potentially work.) Multi family customers sweeping  
4212 days will coincide with the residential geographical area in which they are located.

**Special Events** – All community events as defined in exhibit G and section 4.12 of the contract will be advertised in the Quarterly Newsletter.

**Used Motor Oil & Filters** – Multi-family customers will be notified of the collection guidelines through the newsletter. Collection to be at the curb if applicable and outside of the recycling cart or bin on pick-up day, in clear one-gallon jug(s) with the lid taped shut. Oil filters are to be placed also at the curb if cart service is available or outside the recycling bin, if bin service is used and are to be drained of excess oil and individually placed in sealed zip-lock bags.

**Annual Promotion of Diversion Statistics** – In the October 15<sup>th</sup>, 2004 newsletter we will report the tonnage of all diverted material to show the positive impact of the program.

### **Advertising and Community Outreach**

**Starter Kit** - A Starter Kit will be sent April 1<sup>st</sup>, 2004 via direct mail to all Multi-family units. Starter kit will include detailed recycling options and directions on how to contact a site auditor to tailor a program specific to your needs.

**Advertising** – Utilizing local media, Channel 97, as well as available PSA's, advertising will be conducted during the month of April.

**Press Releases** – Utilizing local media, Channel 97, as well as available PSA's and possibly The Record Local or Editorial sections, promotional releases will be made available in March.

**Bill Inserts** –Coordinated with the city and the appropriate billing water company, bill inserts will be provided for the following billing dates: February, June, September and December. Topics will range from operational issues to educational items. These inserts will allow the companies and the city to tailor information as needed.

4241 **IMPLEMENTATION AND CUSTOMER SERVICE PLAN**  
4242 **STOCKTON SCAVENGER**

4243  
4244 **COMMERCIAL SERVICE**

4245  
4246 The same Quarterly Newsletter, as referenced in the Residential Service section of Exhibit M,  
4247 will contain information for the following enhanced services available to the commercial  
4248 customer base. Unless specified "Newsletter" means quarterly distribution on the dates as  
4249 provided in the residential section of Exhibit M. In addition the April 15<sup>th</sup>, 2004 Newsletter will  
4250 provide contact information to schedule a site visit from a solid waste / recycling material  
4251 specialist who will fully understand the new program and tailor the customers needs to the  
4252 benefits of the program in order to maximize recycling and cut down on customer costs.

4253  
4254 **Co-Mingled Recycling Guidelines** – Commercial customers will be provided a listing of  
4255 materials that are acceptable within each program. Future Newsletters may contain a list of  
4256 commonly seen items which are unacceptable, Diversion rates and other items which may be  
4257 added from time to time in accordance with Exhibit A section 3.

4258  
4259 **Customer Service Information** – Provided in the Newsletter, commercial customers will be  
4260 given information by site auditors on how to contact various Waste Management Departments  
4261 who can customize the new system to fit the individual customer needs. This could include how  
4262 to increase diversion and help cut costs, answer questions on charges or schedule that extra  
4263 pick-up. Access via the Internet will also be provided to contact WM directly with all inquiries  
4264 being forwarded directly to the site management team.

4265  
4266 **Green / Food Waste Recycling** – Guidelines for cart or bin collection in the April 15<sup>th</sup>, 2004  
4267 and July 15<sup>th</sup>, 2004 Newsletter will educate commercial customers on the recycling of both  
4268 green and food waste acceptable materials. Again on May 19<sup>th</sup> a direct mailer will be sent to all  
4269 commercial business outlining the availability of the green / food waste program.

4270  
4271 **Christmas Tree Collection** – Tree recycling from December 26 through January 15 on  
4272 customer's regularly scheduled collection day. Christmas trees are to be placed next to the  
4273 existing solid waste/recycling receptacle. This service will be provided at no charge as outlined  
4274 in section 4.8 of the contract

4275  
4276 **On-Call Bulky Item Pickup** – On-call pick up of waste that is too large to fit in a cart or bin.  
4277 This includes large appliances, furniture, tires (without rims), carpet, mattresses, and electronic  
4278 scraps for "Special Charges", as provided by Exhibit I.

4279  
4280 **Street Sweeping** – Commercial customers will be notified by the Newsletter and billing inserts  
4281 in May and December. Notifications will communicate to commercial customers the days of  
4282 sweeping activity in their area so bins, carts or vehicles are not left in the right of way to ensure  
4283 maximum sweeping results. (Commercial customers may have multiple pick-ups thus providing  
4284 sweeping the day after service may not potentially work) Commercial customer sweeping days  
4285 will coincide with the residential geographical area in which they are located.

4286  
4287 **Special Events** - All community special events as defined in exhibit G and section 4.12 of the  
4288 contract will be advertised in the Quarterly Newsletter.

**Annual Promotion of Diversion Statistics** – In the October 15<sup>th</sup>, 2004 Newsletter we will report the tonnage of all diverted material to show the positive impact of the program.

**Education of City Workers** – During the month of April city employees will be educated on the fundamentals of the new recycling program.

**Food Waste Workshops** – During the month of April and the month of June food waste recycling workshops will be given.

**Starter Kit** – A Starter Kit will be sent April 1, 2004 via direct mail to all commercial customers. Starter Kit will include detailed recycling options and directions on how to contact a site auditor to customize a program specifically for their site.

**Advertising and Commercial Outreach** – Advertising the new commercial recycling program will begin March 1<sup>st</sup>, 2004, utilizing local media, channel 97, as well as PSA's in addition we will utilize The Record editorial and local sections with educational / promotional releases. Follow up advertising will be April 15<sup>th</sup>, 2004.

**Bill Inserts** – Co-coordinated with the city and the appropriate billing water company, bill inserts will be provided for the following dates: February, June, September and December. Topics will range from operational issues or educational items, such as items being found that are unacceptable, to diversion levels obtained through the program. These inserts will allow the companies and the city to tailor information as needed.

#### **List Of Commercial Services Provided**

The Newsletter will contain the following detailed explanations of the "new" and "expanded" features available to commercial customers beginning January 15<sup>th</sup>, 2004. The Newsletter will be printed in English and Spanish. It is anticipated that we will begin a phased-in collection to those commercial customers that have responded to the mailers by April 15, 2004.

**Solid Waste Service** – 30-60-90-gallon waste carts and bin service from 1 to 9 cubic yards in capacity.

**Debris Box & Compactor Solid Waste** – Debris boxes available from 10 to 40 cubic yards. Compactors will range from 20, 30 or 40 cubic yards.

**Single Stream Recycling Material Collection** – Weekly curbside collection of 30, 60 or 90-gallon waste carts or a maximum of 4 cubic yards. There will be a listing of acceptable commodities that can be placed in waste cart or bin.

**Green Waste & Food Waste Collection** – Weekly curbside collection of 90-gallon waste carts for green waste and food waste collection. There will be a listing of acceptable commodities that may be placed in their waste cart(s).

## **Waste Services Cart Reuse Plan**

### **WASTE MANAGEMENT:**

Residential customers will receive three (3) new carts – garbage, recycling and green waste. The proposed cart color for all three (3) is green. This green will match the existing green carts currently used for garbage collection. At the time of new cart delivery, if a customer is currently using a 90-gallon garbage cart, the cart will be field inspected, stickered and reused for green waste collection.

### **MUTUAL REUSE PLAN:**

Customers will be informed when their carts will be picked up at the time they receive their new carts. Cart delivery will follow the garbage routes so all carts will be empty when collected. If carts are not picked up at this time, they will be collected the week of June 7<sup>th</sup> with the recycling baskets.

Old recycling baskets will be used for school, multifamily or business recycling to collect recyclable materials in small quantities to be then deposited into a larger recycling cart for collection.

Literature will provide customers with reuse and disposal options for their old carts and recycling baskets.







**City of Stockton Expanded Waste and Recycling Collection Program  
Glossary of Components - Public Outreach Plan  
15 August 2003 - Version 1**

<b>Component</b>	<b>Description</b>	<b>Purpose</b>	<b>Minimum Frequency</b>	<b>Distribution Strategy</b>
Newsletter	8-3/4" x 16" three panel tri-folded self-mailer (folds to approx. 8-3/4" x 5-1/4")	Provide quarterly communication with constituents and customers, focusing on source reduction and explaining AB939.	4	Direct Mail
New Cart Size Selection Mailer	8-3/4" x 21-1/4" newsletter, with one panel (8-3/4" x 5-1/4") designed with a perforated postage-paid business reply card.	To announce expanded waste services program in January, provide customers with information about the new cart program, announce new cart delivery notification, and drive customers to select their preferred cart size. This mailer will serve as first-quarter newsletter.	1	Direct Mail
New Cart Delivery Notification	Text included in quarterly newsletter.	To provide customers with an overview on the new program and specific cart delivery dates.	N/A	Via Quarterly Newsletter

Starter Kit	<p>Components include:</p> <ul style="list-style-type: none"> <li>- 8-3/4" x 16" tri-fold brochure</li> <li>- Old cart notification card</li> <li>- Plastic bag to hold contents</li> <li>- Rubber band to secure to cart</li> <li>- Addl. information provided by City (optional)</li> </ul>	To provide customers with ample information regarding their new program, information on old cart collection the following week. Additionally, if the City provides other information, haulers will include in the package. Starter Kit brochure "doubles" as an Informational Brochure for placement at City Hall, City locations (libraries, etc.) and for hauler customer service center distribution as needed.	1	Delivered with carts
Notification Card for old containers	3" x 5" postcard	To inform customer of old container pickup schedule. Card inserted into Starter Kit.	1	Included in Starter Kit, delivered with carts
Collection Day Change Postcard (Allied only)	4" x 5" Postcard	To inform customers of route changes as necessary.	1	Direct Mail
Utility Bill Inserts	3-1/2" x 8-1/2" cards	To be inserted with City Utility bills to inform customers of specific events or educational needs.	4	Utility Bill
Violation Notification Cart Tag	4-1/4" x 11" cards with door hanger cut-out	To be placed on carts if cart violations occur.	N/A	Placed on carts as needed
Press Release	N/A	To inform residents and businesses about the new expanded waste and recycling collection program via the local media.	2	Local Media

Advertisement	N/A	To inform residents and businesses about the new expanded waste and recycling collection program via the local media.	Up to 5	Local Media
Bulky Item Collection Notification	Text included in quarterly newsletter	To educate customers on program attributes.	4	Via Newsletter
Holiday Tree Collection Notification	Text included in quarterly newsletter and cart tags	To educate customers on program attributes.	2	Via Newsletter and Bill Insert
Holiday Schedule Notification	Text included in quarterly newsletter	To educate customers on program attributes.	4	Via Newsletter
Used Oil Recycling Notification	Text included in quarterly newsletter and bill inserts	To educate customers on program attributes.	4	Via Newsletter
Household Hazardous Waste Notification	Text included in quarterly newsletter and bill inserts	To educate customers on program attributes.	4	Via Newsletter
Recycling Guidelines Notification	Text included in quarterly newsletter	To educate customers on program attributes.	4	Via Newsletter
Side Yard Service Notification	Text included in quarterly newsletter	To educate customers on program attributes.	2	Via Newsletter
Criteria for Low Income Senior Rates	Text included in quarterly newsletter	To educate customers on program attributes.	2	Via Newsletter
Neighborhood clean-up Notification	Text included in quarterly newsletter	To educate customers on program attributes.	2	Via Newsletter
Seasonal Leaf Collection Notification	Text included in quarterly newsletter	To educate customers on program attributes.	1	Via Newsletter
Customer Service Information (number to call, hours of operation, etc.)	Text included in quarterly newsletter	To educate customers on program attributes.	4	Via Newsletter

Cart Placement Guidelines Notification	Text included in quarterly newsletter	To educate customers on program attributes.	2	Via Newsletter
Green/Food Waste Guidelines Notification	Text included in quarterly newsletter	To educate customers on program attributes.	2	Via Newsletter
Street Sweeping Reminders Notification	Text included in quarterly newsletter and bill inserts	To educate customers on program attributes.	6	Via Newsletter and Bill Insert
Special Events Notifications	Text included in quarterly newsletter	To educate customers on program attributes.	4	Via Newsletter
Public Education Outreach Kit	Components include: - Poster - Easel - Literature card (3 1/2" x 8 1/2") - Literature Card Holder - Sample Carts	To be used for community outreach programs as requested by the City.	N/A	Delivery

4357 **IMPLEMENTATION AND CUSTOMER SERVICE PLAN**  
4358 **STOCKTON SCAVENGER**

4359 **STREET SWEEPING AND SEASONAL LEAF COLLECTION**  
4360

4361 Stockton Scavengers Association, a Waste Management Company, will provide street  
4362 sweeping and seasonal leaf collection services as described in Article 4 and as provided in  
4363 Exhibit H of the Collection Service Agreement. Stockton Scavengers intends to provide street  
4364 sweeping and seasonal leaf collection services by sub-contracting the described services to a  
4365 company with extensive and reputable street sweeping experience.  
4366

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4368 **General**

4369 Street sweeping in all residential areas will take place every other week, following the trash  
4370 collection services by one working day. Commercial, multi-family, and industrial areas; as well  
4371 as City parking lots (See Attachment A), will be swept every other week coinciding with the  
4372 residential geographical area they are located in. This may preclude next-day sweeping  
4373 following trash collection because of possible multiple pick-up days for these types of  
4374 occupancies. The Downtown Areas will be swept Monday, Wednesday and Friday.  
4375

4376 Street sweeping services will also be provided following Special Events and community cleanup  
4377 events as specified in Article 4.12 and 4.13.  
4378

4379 Street sweeping for after hours emergency clean up will be provided as required by the City at  
4380 the agreed upon additional cost.  
4381

4382 Contractor will provide leaf collection, collected loose on all public streets with or without curbs  
4383 on an every other week basis from October 1 through December 31 of each year. Leaf  
4384 collection at City owned parks and parking lots will also be provided during this same time  
4385 frame.  
4386

4387 Green waste, plastic bags, bundles and boxes piled at the curb will be collected at the agreed  
4388 upon additional cost.  
4389

4390 **Equipment**

4391 Street sweeping and leaf collection services will be provided by equipment that meet the  
4392 performance standards as described in Article 4 and as provided in Exhibit H. The various  
4393 types of equipment that will be utilized in providing street sweeping and leaf collection services  
4394 are as follows:  
4395

<u>Description</u>	<u>Number</u>
Regenerative and mechanical broom Sweeper**	Four (4)
Compaction Vehicle**	Two (2)
Tractor with Claw**	One (1)
20 cubic yard debris Boxes	Four (4)
** A specific list of equipment and required information will be provided prior to the implementation of sweeping services.	

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### **Hours of Service**

Sweeping shall be scheduled to maximize the area of streets being swept by minimizing interference by parked vehicles, traffic and other obstacles. Street sweeping shall be scheduled in such a way as to minimize noise complaints in residential areas. Hours of service will meet the standards as described in Article 4 and as provided in Exhibit H.

### **Operation**

Street sweeping will be performed Monday through Friday between the hours of 4:00 a.m. and 5:00 p.m. Vehicles will provide sweeping services in accordance with the guidelines established in Article 4 as provided in Exhibit H.

### **Dust control**

To assure the control of dust, the proper volume of water will be applied by the sweepers. Contractor will secure the proper permits to access water from the appropriate water company.

### **Disposal**

Once sweeper is full of debris, it will dump the material into a strategically located compaction truck or debris box to maximum street sweeping. Compaction vehicles and debris boxes will be transported directly to a landfill for disposal or to a processing site to recover any material that has potential for reuse or recycle.

### **Customer Outreach**

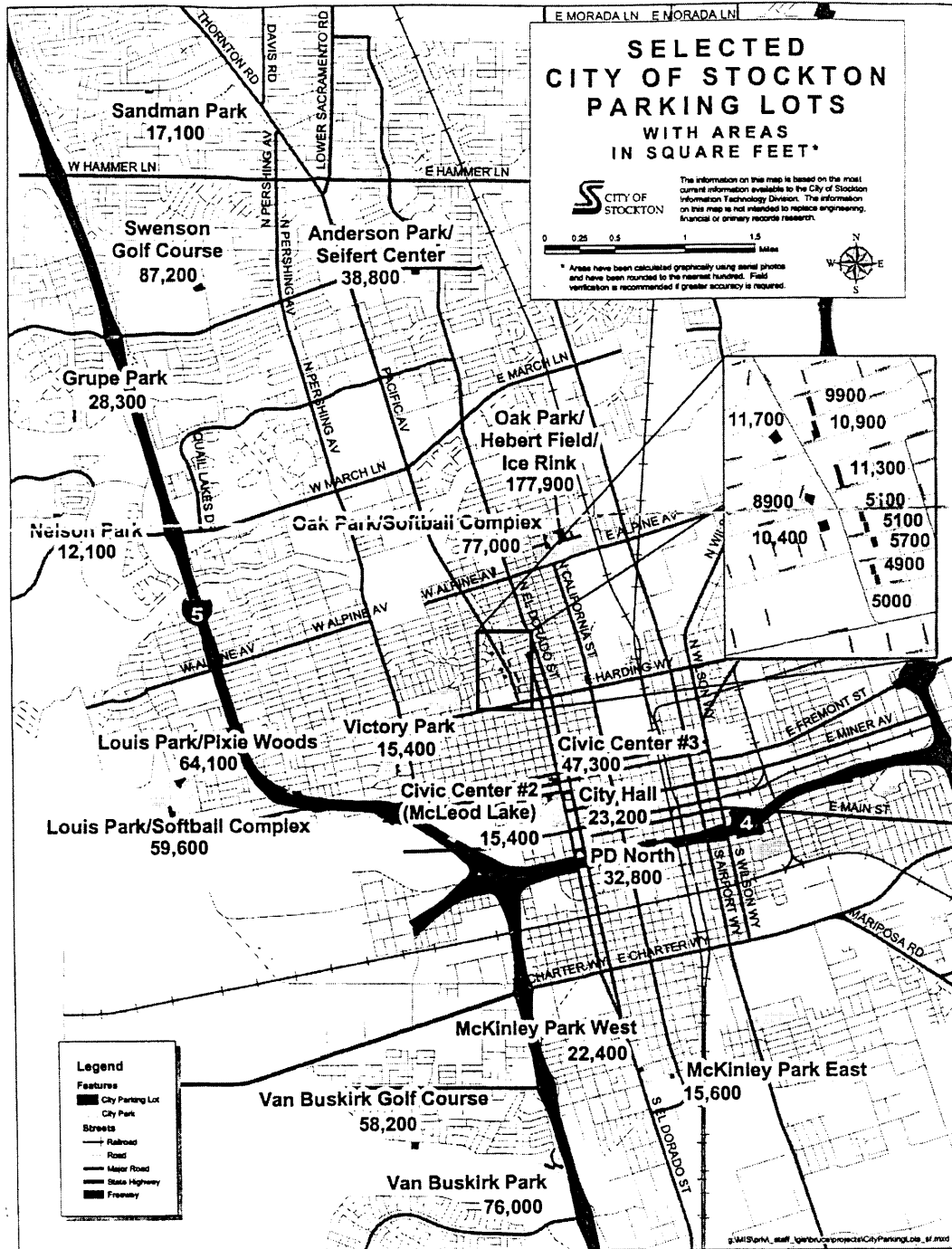
**January 15, 2004-** Details of the "New WHO, WHAT, WHEN AND WHY Sweeping Services" details will be distributed in the Residential and Commercial start-up kit.

**June 1, 2004-** Prior to the Street Sweeping implementation date, Stockton Scavengers in cooperation with the Sweeper Sub-Contractor, will evaluate streets to determine "Hot Spots". The focus in this evaluation will be on main arteries, and heavy foliage and high traffic or dirty areas.

All Customer Outreach and Public Education for Street Sweeping and Seasonal Leaf Collection will be in coordination with Residential and Commercial Solid Waste Collection Services.

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**EXHIBIT M  
ATTACHMENT "A"  
STOCKTON PARKING LOTS**









Pete



City of Stockton Expanded Waste and Recycling Collection Program  
Implementation Plan  
22 August 2003 - Version 1

Operational Implementation Plan	Component	Min Freq.	Distribution Strategy		Timing											
				2003	Jan-04	Feb-04	Mar-04	Apr-04	May-04	Jun-04	Jul-04	Aug-04	Sep-04	Oct-04	Nov-04	Dec-04
Residential	Order Equipment	1		9/1/03												
	Residential Cart Delivery	1						4/12	5/28	6/1						
	Customer Service Training	1		Nov/Dec												
	Cart Reuse Plan	1	See attached					4/12	5/28	6/1						
	City Administrative Services Training	1		Nov/Dec												
	Change Collection Day Schedules	1				2/1										
	Old Cart/Container Collection	1						4/12	5/28	6/7						
Multi-Family	Order Equipment, if required	1		9/1/03												
	Container Delivery	1						4/12	5/28	6/1						
	Customer Service Training	1		Nov/Dec												
Commercial	Order Equipment, if required	1		9/1/03												
	Commercial Recycling Container Delivery	1						4/12	5/28	6/1						
	Commercial Green/Food Waste Cart	1						4/12	5/28	6/1						
	Customer Service Training			Nov/Dec												
	Community Clean-Up support (Provide recycling and trash containers at City sponsored events)	5	Deliver	TBD												

Public Education and Outreach Program Implementation Plan	Component	Min Freq.	Distribution Strategy		Timing											
				2003	Jan-04	Feb-04	Mar-04	Apr-04	May-04	Jun-04	Jul-04	Aug-04	Sep-04	Oct-04	Nov-04	Dec-04
Residential	Newsletter	4	Direct Mail		1/15			4/15			7/15			10/15		
	New Cart Size Selection Mailer	2	Included in Jan Newsletter and reminder in Mar		1/15		3/1									
	New Cart Delivery Notification	1	Included in Jan Newsletter		1/15											
	Starter Kit	1	Delivered with carts					4/12	5/28							
	Notification Card: for old carts and recycling baskets	1	Included in Starter Kit					4/12	5/28							
	Collection Day Change Postcard	2	Direct Mail				3/1		5/15							
	Utility Bill Inserts	4	Utility Bill			2/15			5/15				9/15			12/31
	Violation Notification Cart Tag	N/A	Placed on carts as needed													
	Advertising	up to 5	Local Media		1/1	2/1	3/1	4/1	5/1							
	Press Releases	3	Local Media		1/15		3/15		5/15							
	Bulky Item Collection Notification	4	Via Newsletter		1/15			4/15			7/15			10/15		
	Holiday Tree Collection Notification	2	Via Newsletter and Cart Tag											10/15		12/31
	Holiday Schedule Notification	4	Via Newsletter		1/15			4/15			7/15			10/15		
	Used Oil Recycling Notification	4	Via Newsletter		1/15			4/15			7/15			10/15		
	Household Hazardous Waste Notification	4	Via Newsletter		1/15			4/15			7/15			10/15		

Public Education and Outreach Program Implementation Plan	Component	Min Freq.	Distribution Strategy		Timing											
					2003	Jan-04	Feb-04	Mar-04	Apr-04	May-04	Jun-04	Jul-04	Aug-04	Sep-04	Oct-04	Nov-04
Residential	Recycling Guidelines Notification	4	Via Newsletter		1/15			4/15			7/15			10/15		
	Side Yard Service Notification	2	Via Newsletter		1/15						7/15					
	Criteria for Below Median Income & Senior Rate Notification	2	Via Newsletter		1/15						7/15					
	Neighborhood Clean-up Notification	5	Via Newsletter and Bill Insert		TBD											
	Seasonal Leaf Collection Notification	1	Via Newsletter											10/15		
	Customer Service Information	4	Via Newsletter		1/15			4/15			7/15					
	Cart Placement Guidelines Notification	2	Via Newsletter		1/15						7/15					
	Green/Food Waste Guidelines Notification	2	Via Newsletter					4/15								
	Street Sweeping Reminders Notification	6	Via Newsletter and Bill Insert		1/15			4/15	5/15		7/15			10/15		12/31
	Special Events Notifications	4	Via Newsletter		1/15			4/15			7/15			10/15		
	Annual Promotion of Source Reduction, Recycling, etc. (Diversion stats)	1	Via Newsletter											10/15		
	PowerPoint Presentation (City will drive)	1	N/A	9/30/03												
	Workshops (Community) includes discussions on Food Waste ( 8 total, 4 per hauler)	8	N/A				3/15 (2)	4/15 (2)	5/15 (2)	6/15 (2)						
	School Programs (approx. 20 total, 10 per hauler) Frequency is flexible	20	N/A					4/15 (4)	5/15 (4)	6/15 (4)			9/15 (4)	10/15 (4)		
	Festival Attendance - Monthly Farmers Market and large community events (approx. 16 total, 8 per hauler) Frequency is flexible	16	N/A		1/15	2/15	3/15	4/1	5/1	6/1	7/15	8/15	9/15	10/15	11/15	12/31

Public Education and Outreach Program Implementation Plan	Component	Min Freq.	Distribution Strategy		Timing											
				2003	Jan-04	Feb-04	Mar-04	Apr-04	May-04	Jun-04	Jul-04	Aug-04	Sep-04	Oct-04	Nov-04	Dec-04
Multi-Family	Multi-Family Starter Kit	1	Direct Mail					4/1								
	Advertising	1	Local Media				4/1									
	Press Releases	1	Local Media					3/15								
	Bill Inserts	4	Waste Bill			2/15				6/15			9/15			12/31
	Newsletter	4	Direct Mail		1/15			4/15			7/15			10/15		
	Bulky Item Collection Notification	4	Via Newsletter		1/15			4/15			7/15			10/15		
	Holiday Tree Collection Notification	2	Via Newsletter										10/15		12/31	
	Holiday Schedule Notification	4	Via Newsletter		1/15			4/15			7/15			10/15		
	Household Hazardous Waste Notification	4	Via Newsletter		1/15			4/15			7/15			10/15		
	Recycling Guidelines Notification	4	Via Newsletter		1/15			4/15			7/15			10/15		
	Neighborhood Clean-up Notification	2	Via Newsletter					4/15						10/15		
	Customer Service Information	4	Via Newsletter		1/15			4/15			7/15					
	Green/Food Waste Guidelines Notification	2	Via Newsletter					4/15								
	Street Sweeping Reminders Notification	6	Via Newsletter and Bill Insert		1/15			4/15	5/15		7/15			10/15		12/31
	Special Events Notifications	4	Via Newsletter		1/15			4/15			7/15			10/15		
	Annual Promotion of Source Reduction, Recycling, etc. (Diversion stats)	1	Via Newsletter											10/15		
	Used Oil Recycling Notification	4	Via Newsletter		1/15			4/15			7/15			10/15		

Public Education and Outreach Program Implementation Plan	Component	Min Freq.	Distribution Strategy	Timing												
				2003	Jan-04	Feb-04	Mar-04	Apr-04	May-04	Jun-04	Jul-04	Aug-04	Sep-04	Oct-04	Nov-04	Dec-04
Commercial	Commercial Starter Kit	1	Direct Mail					4/1								
	Advertising	1	Local Media				3/1									
	Press Releases	1	Local Media					4/15								
	Bill Inserts	4	Waste Bill			2/15				6/15			9/15			12/31
	Newsletter	4	Direct Mail		1/15			4/15			7/15			10/15		
	Recycling Guidelines Notification	4	Via Newsletter		1/15			4/15			7/15			10/15		
	Customer Service Information	4	Via Newsletter		1/15			4/15			7/15					
	Green/Food Waste Guidelines Notification	2	Via Newsletter					4/15								
	Holiday Tree Collection Notification	2	Via Newsletter											10/15		12/31
	Special Events Notifications	4	Via Newsletter		1/15			4/15			7/15			10/15		
	Annual Promotion of Source Reduction, Recycling, etc. (Diversion stats)	1	Via Newsletter											10/15		
	Green/Food Waste Mailer	1	Direct Mail						5/19							
	Recycling Education for City workers	1	N/A						5/15							
Workshops (Food waste)	2	N/A					4/15		6/15							
Public Outreach Kit	Public Education Outreach Kit:	N/A	Delivery		TBD											
	This kit will be dropped off at community group locations (churches, community centers, homeowner association, etc.) as needed/coordinated by the City. This Kit addresses the further minority outreach participation requested by the City.															
* NOTE: Schedule listed above is an approximation of timetable. Actual timing may fluctuate based on City needs, available resources and other factors.																

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**EXHIBIT N**  
**COOPERATION AGREEMENT**

**COOPERATION AGREEMENT BETWEEN AW/SUNRISE SANITATION AND WM/  
STOCKTON SCAVENGER ASSOCIATION**

1. All special events, as identified in exhibit G, will be handled the first year of the contract, beginning in June 2004, by WM then alternating year to year with Allied Waste (AW). The service will include sweeping services.
2. The five (5) neighborhood clean-ups each contractor will provide curbside collection in their designated area, in addition, each contractor will provide up to six (6) drop boxes for recycling/trash service per event.
3. Community clean-ups will be alternated by contractors beginning with Allied Waste / Sunrise. Contractors have historically provided no more than one-40 cubic yard drop box of service per clean up. Recycling services, drop box source separation or off site separation will be provided at / for the event.
4. Contractors shall service public litter and recycling containers on their respective side of the franchise territory. Contractor respectfully requests location of current and potential future cans to provide service. Street sweeping including downtown and city lots will be split along the franchise boundary line.
5. Contractors to provide the City facility services as outlined in exhibit F. Contractors will split services by franchise boundary lines. City services listed below, located in the Sunrise/AW service territory, will be serviced by Stockton Scavengers/WM
  - a. Van Buskirk Center 1-4-1
  - b. Victory Park 2-7-1
  - c. Legion Park 1-7-1
  - d. Stuart Gibbons Park 1-4-1
  - e. Sandman Park 1-7-1
  - f. Buckley Cove 1-7-1
6. Annexations will be awarded to the Contractor, which services the franchise territory. Contractors and City at the request of the contractor will evaluate billed residential units each five (5) years, beginning no sooner than June 2009. Should a variance greater than 10 % exist an adjustment to the boundary lines will be made.
7. Cart colors will be Brown for Sunrise Sanitation and Green for Stockton Scavenger. This utilization will help to provide identity of the service provider in each franchise territory as well as inventory maintenance control. Lid colors will be unified for both companies, green for yard and garden, gold/yellow for recycling and gray for refuse

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8. Contractors will work jointly with each other and the City of Stockton in developing all outreach and start-up material. Process is ongoing and will continue with guidance from the City of Stockton



▲  
MAY 2003  
RECEIVED  
Solid Waste Div.  
City of Stockton  
California

### Parent Guaranty

This Parent Guaranty (Guaranty") made as of the 13th day of May, 2003, by Waste Management Holdings, Inc., a Delaware corporation (hereafter, "Guarantor"), and delivered to the City of Stockton, California (hereafter, the "City").

### Recitals

- A. The City and USA Waste of California, Inc., a Delaware corporation (hereafter, the "Company"), are parties to that certain Collection Service Agreement for Solid Waste, Recyclable Materials, and Green Waste and Food Waste Services, entered into on or about April 18, 2003 (hereafter referred to as the "Franchise Agreement").
- B. The Company is a wholly owned subsidiary of Guarantor.
- C. Guarantor is willing to guarantee, as set forth below, that it will cause to be performed all of the obligations and duties of the Company under the Franchise Agreement.
- D. City would be unwilling to enter into the Franchise Agreement unless the Guarantor provided this Guaranty.

### Guaranty

NOW, THEREFORE, as an inducement to the City to enter into the Franchise Agreement, Guarantor agrees as follows:

- 1. Guarantor hereby absolutely and unconditionally guarantees that it will cause the full and prompt performance by the Company of the Company's obligations under the Franchise Agreement in accordance with the terms and conditions set forth therein. All of the rights and remedies of the Company under the Franchise Agreement, including but not limited to, the opportunity to cure any default under the Franchise Agreement, shall accrue to the Guarantor in the enforcement of its obligations under this Guaranty and the Franchise Agreement.
- 2. This Guaranty shall be governed by the laws of the State of California exclusive of the choice of law rules thereof.
- 3. This Guaranty shall be binding upon and enforceable against the Guarantor, its successors, assigns and legal representatives (including any successor by merger or consolidation or any transferee of all or substantially all of the assets of the Guarantor), whether or not such obligations are expressly assumed by such successor, assignee or transferee, and is for the benefit of City, and its permitted successors and assigns under the Franchise Agreement.
- 4. No failure or delay by City in exercising any right, power or privilege hereunder or under the Franchise Agreement shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided in the Franchise Agreement or by law or equity. No waiver, amendment, release or modification of this Guaranty shall be established by conduct, custom or course of dealing, but solely by an instrument in writing duly executed by the party against whom such waiver, amendment, release or modification is sought to be enforced.
- 5. Guarantor may not assign its obligations hereunder, except to a successor by merger or consolidation or to any transferee of all or substantially all of the assets

5/14/03 gks

Original to:  
Barbara Anderson

copied to:  
Jim Giattorini  
Mike Miller  
Cen. Files

of Guarantor. Notice of any such assignment shall be given in writing to City within thirty (30) days after the effective date of any such merger, consolidation or transfer.

6. City shall notify Guarantor in writing, at its address set forth herein, of City's notice to the Company of any default on the part of the Company due to its failure to meet its obligations under the Franchise Agreement.
7. Guarantor has the authority to execute this Guaranty and to make the representations and warranties set forth in it and to perform the obligations of Guarantor under this Guaranty in accordance with its terms. This Guaranty constitutes a valid and legally binding and enforceable obligation of Guarantor. Neither the execution of this Guaranty nor its performance by Guarantor will conflict with or result in the breach of any instrument, restriction, covenant, agreement or other undertaking or conflict with the Articles of Incorporation, or other charter documents or By-Laws of Guarantor. This Guaranty has been executed by all the officers of Guarantor whose execution is required, and this Guaranty is valid and enforceable with respect to the obligations of Guarantor to perform in accordance with its terms and conditions.
8. None of the representations or warranties in this Guaranty, and none of the documents, statements, certificates or schedules furnished or to be furnished by Guarantor pursuant hereto or in connection with the performance of the obligations contemplated under this Guaranty, contains or will contain any untrue statement or a material fact or omits or will omit to state a material fact necessary to make the statements of fact contained therein not misleading.
9. This Guaranty may be executed simultaneously in several counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. The invalidity or unenforceability of one or more provisions of the Guaranty shall not affect the validity or enforceability of the remaining portions of this Guaranty.
10. Any term used herein and defined in the Franchise Agreement shall have the meaning attributed to it in the Franchise Agreement.

IN WITNESS WHEREOF, the Guarantor has executed this Guaranty as of the date set forth above.

GUARANTOR:

WASTE MANAGEMENT HOLDINGS, INC.

By



Ronald H. Jones

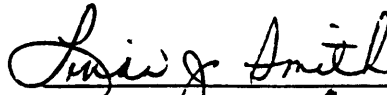
Title:

Vice President & Treasurer

Date:

May 13, 2003

By



Title:

Linda S. Smith, V.P.

ASSISTANT SECRETARY

Date:

May 13, 2003